

AGENCY SUBMISSION ON ENVIRONMENTAL AGREEMENT FINANCIAL SECURITY

Article IV—Agency Operations into Post-Closure

Introduction

A December 19, 2014 e-mail from Robert Jenkins (GNWT), requested the following information:

1. Rationale as to the length of time proposed for operation of IEMA post-closure.
2. Rationale to support proposed costs, by year, to operate IEMA in the post-closure period. Please detail/breakdown costs. In your submission, please describe the anticipated activities that the Agency will undertake and how that will change through time (or how the level of effort associated with an activity will change through time), corresponding to the completion of reclamation activities (or reduction in reclamation effort associated with a reclamation activity) over time.

The Agency's primary objective is to ensure that the Environmental Agreement is implemented effectively until the full and final reclamation of the Ekati Mine as required under the Agreement and other regulatory instruments. As the Agency is a creature of the Agreement and plays a significant role in its implementation, the Agency wishes to ensure that there are sufficient funds available to fulfill its mandate and responsibilities under the Agreement and its by-laws, as a registered non-profit society under NWT legislation. This was all part of the original commitments made for the Ekati Mine to proceed with the support of the federal, territorial and Aboriginal governments.

Assumptions and Rationale

The Agency has carefully considered the request by GNWT for additional information. Our predictions are based on the mandate and responsibilities of the Agency under the Environmental Agreement and *Societies Act*, and our current budget and work plan. Our current budget is zero-based, linked back to our mandate and tested over time through numerous cycles, including twice yearly meetings with the signatories to the Environmental Agreement. Our overall performance, including budget and work plan, have also been tested through two independent reviews of the Agency conducted in [2000](#) and [2009](#), with favourable outcomes. The results presented here are based on actual expenditures for the tasks outlined, drawn from our current budget.

The following outline the assumptions made by the Agency regarding budgetary requirements under Article 4 of the Environmental Agreement in the event the security deposit needs to be accessed:

1. Closure Scenarios

There are basically two main closure scenarios for the Ekati Mine. The first, and preferred outcome, would be an orderly wind-down of mining operations as contemplated in the approved Interim Closure and Reclamation Plan (ICRP) as shown in the Ekati Reclamation Schedule (Figure 8.5-1). This scenario assumes that DDEC or

another mining company would continue mining and progressive reclamation until full and final closure of the site. As there would be a corporate entity to carry out these functions and the Environmental Agreement would remain in place, along with the commitment to fund the Agency, there would be in the view of the Agency, no need to draw on financial security.

The second closure scenario involves an abrupt closure due to unforeseen circumstances. With this scenario there would be some likelihood that there would be insufficient funds for the Agency to continue to operate and financial security under the Environmental Agreement would be needed. The additional information presented in this submission is based on this second closure scenario. It is important to note that this scenario has not been assessed using RECLAIM nor has it been reviewed by the Wek'eezhii Land and Water Board (WLWB)

2. Closure Timelines

Interim Care and Maintenance Period—There is significant uncertainty around the closure objectives and criteria for Ekati given the large body of reclamation research that is still required. The Agency remains of the view, as supported by the [WLWB](#), that a three-year interim care and maintenance period would be required. This should allow for completion of some of this critical work and preparation of contracts to properly close the mine. During this period, it is assumed that monitoring programs will continue as will all other functions of the Agency, so no change in budget is proposed. Indeed, there could well be increased regulatory activity (e.g., new water licence for closure, or changes to the closure plan) during this time.

Primary Reclamation Period— The Agency expects that much of the reclamation work would be carried out during at least a three-year primary reclamation period. This would be a very busy time in reviewing the results of the reclamation activities with no anticipated reduction in monitoring programs at site. During the three years of primary reclamation, the Agency will need to operate at full capacity to maintain its oversight role.

Post-Closure Monitoring Period—During the post closure monitoring phase (currently 10 years as specified in the ICRP and [RECLAIM](#)) the Agency will need to operate at full capacity to maintain its oversight role. The underlying assumptions here are that the reclamation activities and performance would ensure that the approved closure criteria are actually achieved. This may or may not happen during the 10 year period specified in the ICRP. Given the significant uncertainty around the closure objectives and criteria and the large amount of remaining reclamation research, a 10-year post-closure monitoring period may be overly optimistic. Nevertheless, we have assumed only ten years.

Pit Flooding, Channel and Dam, Dyke and Channel Work Period—The Agency has used a 25 year-period for work on dams, dykes and channels (for Beartooth, Panda and Koala), and pit flooding and monitoring (for Sable, Beartooth, Panda and Koala, and Fox). We note that the adjusted [RECLAIM spreadsheets](#) that reflect the WLWB approval of water licence financial security, show a 39-year period for pit water quality monitoring in the Post-Closure tab, while Fox pit filling may require as long as 52 years as shown in the Open Pits tab. The Ekati Reclamation Schedule (Figure 8.5-1) from the ICRP shows pit filling for a minimum period of at least 39 years. Given the RECLAIM estimates, the Agency believes that a 25-year period for this phase of closure is reasonable and if anything, a very optimistic (too short) timeline. The Agency acknowledges that site activities, company monitoring and reporting will decline over this period and that the technical work of the Agency will also begin to be reduced in scope. However, Agency responsibilities for communication with the public and, especially, the Aboriginal Society members, are assumed to remain unchanged during this period.

3. Other Assumptions

The Agency believes that, during the post-closure monitoring period, very important monitoring will be taking place and that overseeing these results will be crucial for the effective closure of the Mine, and that communication of the results to Society members is both required by the Environmental Agreement and essential.

The company committed to an annual inflationary increase in the Agency's funding as a result of a [mediation agreement](#). This binding commitment supersedes any RECLAIM modeling assumptions and reflects a shared interest in ensuring that the Environmental Agreement is fully implemented and effective in achieving its purpose.

The argument that RECLAIM uses constant dollars does not suggest inflation should be ignored. It is a means of dealing with inflation. To show the financial impact of the two approaches, in the attached spreadsheet, we have presented the proposed Agency budget in both constant (2015) dollars and in dollars as spent (i.e., adding a 2% CPI for inflation).

Agency Operations into Post-Closure

The Agency proposal for funding into the post-closure phase is shown in the attached spreadsheet and chart. A quick summary of the Agency's current budget and work plan shows how the activities and function reflect the mandate and obligations under the Environmental Agreement.

1. Background on Agency Activities and Budget

Board Meetings—Currently, four face-to-face meetings are held each year to allow for business to be conducted including meetings with the company and regulators.

Agency Participation in Document Review and Related Travel—This part of the Agency's budget allows for the review and comment on a number of monitoring program reports (aquatics, wildlife, and, every third year, air quality) prepared by the mine owner and submitted on an annual basis (or every three years in the case of the Environmental Impact Report). Special studies or other reports may be submitted by the company or by governments (related to Ekati) and the Agency may wish to review and comment on them. Management plans are also required under the water licence and require periodic review and comment from the Agency.

Separate Fund Activities—As a result of previous budgetary dispute, a [Resolution Agreement](#) provides the Agency with a special fund of \$40,000 that is only to be used for its participation in proceeding where a public hearing is likely to be held. If expenses are not allocated to the fund, any surplus must be returned to the company. The Agency generally anticipates participating in water licence renewals or a closure water licence proceeding in connection with the Ekati Mine.

Consultation and Communications—The Agency's mandate includes dissemination of information to its Society members and the general public. The Agency has a practice of holding at least one of its Board meetings in a community each year. It also distributes newsletters and an Annual Report as required under the Environmental Agreement. The Agency is also required under its by-laws to hold an annual general meeting and has covered the travel costs for the Aboriginal Society members to attend this meeting. Other communications activities include the maintenance of a website, workshops held in conjunction with other meetings, community visits upon request and twice annual meetings with the signatories to the Environmental Agreement to discuss implementation and coordination.

Outside Contracts—Although the Agency Directors are generally experts in one field or another, there are times when outside expertise is required to review specific reports or submissions. This budget item has also traditionally served as a contingency amount in the event of other unforeseen situations or activities.

Management and Administration—To assist the Agency Board of Directors to follow through on commitments and to ensure there is a presence on the ground, an office and staff are retained. The office also serves as a repository of information about the environmental aspects of the Ekati Mine and the Agency's operations, as required under the Environmental Agreement. As required under the *Societies Act* and in the interest of sound financial management, the Agency retains bookkeeping services and has an external financial audit conducted on an annual basis.

GNWT and DDEC both participate in the twice annual Environmental Agreement implementation meetings and are aware of the Agency's annual budget and work plan. If additional details are required, the Agency can provide that information. From the above explanations, several of the Agency's activities and functions are fixed in respect

of its mandate and obligations under the Environmental Agreement, even if activities at the site diminish over time.

2. Agency Proposed Funding Over Post-Closure

Interim Care and Maintenance Period—The Agency believes that the full suite of its activities and obligations will be required to be carried during this three-year phase. The general areas of activities are shown in the spreadsheet and reflect the Agency's current budget and work plan.

Primary Reclamation Period—The Agency believes that the full suite of its activities and obligations will be required to be carried during this three-year phase. The general areas of activities are shown in the spreadsheet and reflect the Agency's current budget and work plan.

Post-Closure Monitoring Period—The Agency believes that the full suite of its activities and obligations will be required to be carried during this ten-year phase. Further time and effort on the part of the Agency (and other regulators) will be required should reclamation performance not achieve closure criteria.

Pit Flooding, Channel and Dam, Dyke and Channel Work Period—The Agency acknowledges that its level of activities will decline over this period as a result of likely reductions in monitoring and reporting. Specific reductions beginning in 2032 at the start of this phase in the Agency's activities are as follows:

- Board Meetings Reduced by 25% in 2032 (3/year), 50% in 2039 (2/year), 75% in 2048 (1/year);
- Agency Participation in Document Review reduced by 20%/year from 2032 to 2055
- Separate Fund Activities reduced by 20%/year from 2032 to 2055;
- Consultation and Communications reduced by 20%/year from 2032 to 2055
- Outside Contracts (maintained at current amount as a contingency); and
- Management and Administration reduced by one staff person in 2032 (\$92,000 in constant 2015 dollars).

As can be seen from the attached spreadsheet, the Agency has proposed a total of \$20.437 million to allow it to fulfill its obligations under the Environmental Agreement, based on the assumptions outlined above.

Closing Comments

The Agency remains available to assist GNWT and DDEC in setting the financial security required under the Environmental Agreement. This submission deals with the Agency's operations, as generally outlined in Article IV of the Environmental Agreement, during the post-

closure phase assuming an unforeseen and immediate cessation of mining at Ekati. The Agency recommends that DDEC post \$20.437 million for this purpose.

For ease of comparison, we have presented the proposed Agency budget in both constant (2015) dollars and in dollars as spent (i.e., adding a 2% CPI for inflation during the first 16 years). If constant (2015) dollars is the approach to be taken, it is essential that every year the security held be adjusted upwards to provide the same purchasing power.

For clarity, the Agency has not changed its position on proposed financial security for other obligations under the Environmental Agreement as shown in Table 1 below.

Lastly, as the Environmental Agreement requires a cost variance report from the company every two years and a joint progress review, it would be helpful to look at the lessons learned from the current process. GNWT may also wish to provide some additional guidance on how costs may be best calculated, including those for the Agency's operations into post-closure.

Table 1. Summary of Proposals for Environmental Agreement Security

Article	Agency Proposal Amount	DDEC Proposal Amount
IV—Agency Funding	\$20,437,275	\$5,398,000 (based on Dec. 2014 presentation)
V—Annual Report	\$400,000	\$0 (\$130,000 reallocated from within Post-Closure Monitoring & Maintenance tab)
V—Environmental Impact Report (EIR)	Agree with DDEC proposal except it should not cover public meetings	\$250,000 (includes public meetings)
V—Public Meetings	\$7,360,000	Included in Annual Report and EIR above
VI—Revision of Environmental Management Plans	\$160,000	\$0 (\$130,000 reallocated from within Mobilization tab)
VII—Environmental Monitoring Programs	\$1,080,000	\$0 (not included in the monitoring period chosen by DDEC)
IX—Ongoing Environmental Compliance	Additional information requested of DDEC	\$750,000
X—Archaeological Sites	Additional information requested of GNWT	\$0 (\$60,000 reallocated from within Post-Closure Monitoring & Maintenance tab)
XI—Traditional Knowledge	Agency prefers to deal with TK as part of Article XII	\$0 (\$50,000 reallocated from within Mobilization tab)
XII—Reclamation Research	\$15,500,000 for reclamation research	\$0 (\$850,000 reallocated from within Mobilization tab for RRP and TK work)
XII—Other Studies	\$200,000	\$0 (Not covered by DDEC)
XIII—Cost Variance and Progress Review	\$300,000	\$0 (Not covered by DDEC)
XIII—Serious and Imminent Threat	\$2,000,000	\$0 (Not covered by DDEC)
TOTAL	\$47,437,275	\$6,398,000