

Independent Environmental Monitoring Agency
91st Meeting of the Board of Directors
Yellowknife, NT
September 9-10, 2015
Summary of Discussion

Directors

Bill Ross
Tim Byers
Jaida Ohokannoak
Arnold Enge
Emery Paquin
Doug Doan
Kim Poole

Staff

Kevin O'Reilly, Executive Director
Tee Lim, Communications
and Environmental Specialist

Meeting commenced at 9:00 am on September 9.

AGENCY BUSINESS

Information Updates

Bill: Called in to Jay Project Management Plan Workshops meeting in late June. Undertook preparations for Jay Technical Report and Public Hearing. Participated in August 11 conference call about Agency preparation for Jay Public Hearing. Administratively, dealt with staff leave requests.

Kim: Completed background review for Jay Public Hearing, looking at technical reports from other Agencies, responses from Dominion Diamond Ekati Corp. (DDEC), preparing Agency presentation on caribou, and drafting questions.

Emery: Engaged largely with work on Jay. Participated in DDEC Air Quality Workshop on July 20. The Agency continued to emphasize a number of air quality issues with the company.

Tim: Worked on Jay Technical Report, and helped review the Agency presentation on water and fish for the Public Hearing. Received request from Peter Unger from the Łutsel K'e Dene First Nation (LKDFN), seeking Tim's support in understanding some of the issues, e.g., meromixis and caribou Zone of Influence (ZOI). Asked to participate in community meeting September 10 by Skype. Peter also expressed hope that Tim would be present for September 19 Public Hearing in Lutsel K'e.

Doug: Following submissions by parties on Jay to Mackenzie Valley Review Board and keeping abreast of preparations for the Public Hearing.

Arnold: Input into Agency's Jay Technical Report and Public Hearing preparations. Some financial administration work also completed.

Jaida: Participated in a number of teleconferences pertaining to Jay. Undertook preparations for Jay Technical Report and Public Hearing. Participated by phone in Jay Project Air Quality and Emission Monitoring Plan workshop, June 26 and the July 20 DDEC Air Quality Workshop.

Kevin: Participated in all Jay Project Management Plan Workshops, and July 20 DDEC Air Quality Workshop. Participated in a number of teleconferences pertaining to Jay, including the Jay Project Pre-Hearing. Completed Agency's Technical Report for Jay. Completed financial audit with Crowe-Mackay.

Bylaw Changes and Proposed Changes to Environmental Agreement

Bill's view was that the Agency should circulate any proposed bylaw changes at least a month ahead of the Annual General Meeting (AGM).

Kevin noted that at the June board meeting, direction was provided around preparing a report on the bylaw changes. He anticipates sending it out with the notice of AGM.

Directors requested that these proposed changes be circulated internally first.

Action Item #1: Agency to include a short report on bylaw changes to the Society members in advance of the 2015 Annual General Meeting.

Financial and Variance Report and Audit

A financial variance report covering expenditures from April 1 to August 31, 2015 was reviewed.

It was noted that the Agency expenditures allocated to the Separate Fund are likely to deplete the funding available very soon. The financial position of the Agency should become clearer in October when most of the Jay Project activities will wind down and staffing changes should be settled.

GNWT Decision on Environmental Agreement Security Deposit (Kate Witherly, GNWT)

Kate Witherly, Manager – Environmental Impact Assessment, Conservation, Assessment and Monitoring with the Government of the Northwest Territories (GNWT) Department of Environment and Natural Resources (ENR), came in to discuss the GNWT’s final decision on the Environmental Agreement Security Deposit for the Ekati Mine. Kate noted that in general, it was an unclear process.

Bill responded that he felt there was in fact a process that had been agreed to, which the GNWT changed in the final stages, resulting in some frustration on the part of the Agency. Kate was asked for an explanation of the changes to the process where the Agency was excluded from the final steps.

Kate explained that GNWT deliberations on the decision had originally begun in a different division. There was some confusion within the GNWT around whether it should be a Ministerial decision, or through an agreement with DDEC. She noted that there was some agreement that the Agency should be consulted, and that there was an intention to communicate more extensively with the Agency, but that when the decision dragged out, good communications with the Agency did not occur. Kate went on that the approach ENR understood from the Department of Lands was that there would be a decision distributed. However once it became a Ministerial decision and it changed hands, this process changed. Kate apologized for the lack of communication later in the process.

Bill responded by noting that the process changed such that the opportunity for the Agency to receive information and provide input was terminated, and that is what the Agency took issue with. He pointed out that procedural fairness was lacking in DDEC being able to provide further information late in the process, without the Agency having the opportunity to review and provide comment on this information. This information appears to have included the original Stratos Consultants report that the Agency had asked for several times, and a new DDEC estimate of remaining Reclamation Research Plans costs under the Interim Closure and Reclamation Plan. The Agency was not provided this information and the Minister appears to have used it in making his decision. The Agency requested that these documents now be provided by GNWT.

Kate was also asked how the GNWT came to determine the costs for the operation of the Agency during the post-closure phase, as there is no detail provided in the decision document.

Kate committed to sending the Agency a more detailed spreadsheet of the GNWT’s calculations of costs for Agency operations during post-closure. GNWT looked at the Agency’s current budget and projected that certain tasks would be reduced in the future. She noted that there is an agreement that the Security Deposit will now be reviewed every two years.

Bill asked another question about what would happen if unexpected events took place at or after closure, as had not been uncommon in the past 18 years. In terms of the Reclamation Research Plans, in the latest approved version of the ICRP the company estimated the cost of carrying out the Plans at \$16 million. The water licence financial security set a figure of \$1 million for the completion of this research and the next version of the ICRP. GNWT seems to have added only another \$1 million under the Environmental Agreement Security Deposit for this work.

Kate responded that DDEC had sent more details on why the costs for carrying out the Reclamation Research Plans should be reduced. Bill noted that this information was not provided to the Agency and that the process was not procedurally fair.

Kate will undertake to see whether DDEC's submission on the Reclamation Research Plans can be provided to the Agency. Kate observed that the GNWT has never done anything like this before, and that hopefully next time a clearer process can be laid out, that can be followed and that all parties will be happy with.

The Agency asked how GNWT set the Post-Closure period at 18 years. The Agency looked at the Ekati RELAIM model spreadsheets and noted that pit flooding could take up to 52 years. In the Agency's last submission to GNWT, it proposed a conservative period of 25 years. If the post-closure flooding period is set at 18 years, it would have a significant effect on the calculation of costs for the future Agency operations.

Kate responded that she could not recall any specifics on why GNWT supported this timeframe.

Bill observed that inflation was not used in the calculations. He noted that if the calculations were done in constant dollars, they should properly be adjusted at next review in 2017. The amount should be increased every year by relevant inflation index amount. Kate responded that she was sure this will be discussed next time, but was not optimistic that inflation would be accounted for in future decisions.

The Agency asked how GNWT calculated a figure for serious or imminent threat – the Ministerial decision set it at \$250,000, while Agency proposed \$2 million. In comparison, the Diavik Environmental Agreement decision set aside \$719,000. Kate responded that \$250,000 was the number Stratos came up with. Kate committed to sending the Agency the Stratos report, which had been requested a number of times by the Agency.

The Agency also asked about the calculation of an amount under Article 5.3 for Public Meetings. The Agency's proposed a figure of \$5.6 M while GNWT set the amount at

\$2.4 million. Kate understood that details would be found in the spreadsheets she committed to send to the Agency.

The Agency observed that the Ministerial decision and Environmental Agreement require that the next review will take place in 2017. It also confirms that any reclamation costs for the Jay Project will be included in the next review. Kate was asked how the next review will be undertaken. Kate responded that GNWT has not really put any thought into that but there will not be as much change taking place. She felt it would be clearer and with less confusion around how it would all work next time around.

It was suggested that the place to start the next review would be a meeting to discuss process, and ensuring a clear understanding by all parties of their obligations, including sharing of information.

Bill added that Kate may wish to provide some documentation now around how to improve process in the future, particularly if there is a prospect that Kate may not be involved in 2017. Kevin noted that some recommendations had already been made by the Agency in October 2014 around how the process could be improved next time. He then asked what became of Carla Conkin and her division's involvement.

Kate responded that she was aware that Lands is working on policy, but that she hasn't seen anything yet and that there is no specific policy in place at this point.

Action Item #2: Kate Witherly to send Agency the spreadsheets with the calculation details that supported the Ministerial decision on the Environmental Agreement Security Deposit and the Stratos report. Kate is to also check on whether the DDEC additional information on the Reclamation Research Plan costs can be provided to the Agency.

Kate noted that regarding the Environmental Impact Report (EIR), the GNWT had agreed to defer by a year, as DDEC had asked to move the reporting cycle.

In terms of the proposed changes to the Environmental Agreement, Bill acknowledged that due to the GNWT and Canada's likely preoccupation with elections, it was assumed neither party was in a great rush to enact these changes. It was noted that these changes were to be discussed further at this board meeting.

Following the meeting with Kate, the Directors agreed to send GNWT a letter of thanks for the meeting on the Security Deposit decision but to also to suggest improvements to the process to be undertaken in 2017.

Action Item #3: Kevin to draft a letter for the Agency on the Ministerial decision on the Ekati Environmental Agreement Security Deposit.

Air Quality Emissions Monitoring and Management Program

Jaida and Emery provided a debrief on the DDEC Air Quality Emissions Monitoring and Management Program workshop held on July 20, which came out of the Jay Project management plan workshop held earlier in the summer where concerns were raised about the 2014 Air Quality Monitoring Program Report and the need for an overall adaptive management framework.

Jaida was convinced that DDEC's protocols for air quality monitoring are improving, data are being collected, and staff are being trained. The next discussions should be around what to do with these data. It was noted that the Mackenzie Valley Environmental Impact Review Board were in attendance at the July workshop, and asked questions about how and when the conceptual plans would be more fully developed.

DDEC has committed to a revised Air Quality Emissions Monitoring and Management Plan, prior to construction of the Jay Project.

Jay Project

The Directors and staff had a lengthy discussion to confirm the direction and details of the Agency's participation in the upcoming Jay Project public hearing. The discussion also considered the presentations to be made by the Agency and questions the Agency would pose to various parties.

Effects of Devolution and the Environmental Agreement

No further correspondence has been received from GNWT, DDEC, Canada or the Aboriginal Society members on the proposed changes to the Environmental Agreement. No responses were received with regard to the July 14, 2015 Agency letter sent to the Aboriginal governments on the further proposal to change the Environmental Agreement. Given that there is no urgency and elections about to commence at both the federal and territorial levels, it was agreed that there was no need for any further action on the part of the Agency.

Emery felt that while the question of Canada's withdrawal from the Environmental Agreement remained unresolved, the Monitoring Agency has performed its due diligence by advising Society Members of Canada's proposed withdrawal and should not take further immediate actions, but should await developments.

Transition Planning

Following the acceptance by the Agency of the Executive Director's request for leave without pay (October 26-November 23, 2015) to seek political office, there was a discussion on transition planning for the Agency staff. The Communications and Environmental Specialist who is currently on parental leave, is scheduled to come back to the Agency on November 19, 2015. The term position is set to end on December 1 but that may end a little earlier.

The Directors discussed a number of activities planned for the remainder of 2015:

- Jay Project Environmental Assessment closing arguments due October 23;
- Review of the Jay Project Report of Environmental Assessment and a possible consultation to modify process;
- Preparation for the next Board Meeting (December 8), Environmental Workshop (December 9) and AGM (December 10) including a report on bylaw changes;
- Possible documents to review as submitted to the Wek'eezhii Land and Water Board by DDEC;
- Finances and reporting including coding of invoices, preparation of variance report and expenditures to date;
- Availability of the Communications and Environmental Specialist to come back before October 23, even part-time in October; and
- Updated Executive Director Job Description needed, along with job advertisement text (ready to go for November 24 if needed) with a transition and hiring schedule, an interview guide/ranking system, and identification of an interview committee.

It was also noted that Bill Ross's term of appointment is up in mid-December and that it may be necessary to contact GNWT, DDEC and Canada to ensure a timely transition.

Action Item #4: Kevin to work with Bill to organize for staff and Director transitions that are to take place in the remainder of 2015.

Other Business

The Directors considered the possibility of not holding an Environmental Workshop this year, particularly given the deferral of DDEC's EIR. However, discussion took place regarding water quality as a possible environmental workshop topic, and the Directors agreed to begin planning to hold an Agency Environmental Workshop on this topic.

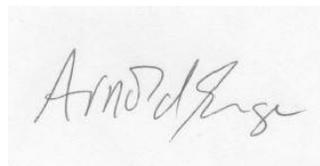
Issues for discussion could include:

- What DDEC currently does, how often, and why, in terms of water quality testing;
- Site-specific water quality objectives;
- Canadian Council of Ministers of the Environment (CCME) process;
- Effluent criteria as determined by the Wek'eezhii Land and Water Board;
- The regulatory regime as determined by the GNWT.

Action Item #5: Kevin to work with the other Agency staff to begin preparations for an Environmental Workshop on December 9 with the theme of water quality.

The next Agency community visit was discussed, possibly in March 2016. A Tłıchq community (Behchokq specifically) or meeting with the North Slave Métis Alliance in Yellowknife were considered. Directors decided the community should be determined in December.

Meeting adjourned at 5:00 pm on September 10, 2015.



**Summary of Discussion Approved by
Arnold Enge, Secretary Treasurer.**
