

*2nd Environmental Agreement Implementation Meeting
Yellowknife, NWT
January 31, 2007
Summary of Discussion*

Revised: March 5, 2007

Participants

Tim Byers, Independent Environmental Monitoring Agency
Jane Howe, BHP Billiton Diamonds
Lionel Marcincoski, Department of Indian Affairs and Northern Development
Gavin More, Government of the Northwest Territories
Kevin O'Reilly, Independent Environmental Monitoring Agency
Bill Ross, Independent Environmental Monitoring Agency
David Scott, BHP Billiton Diamonds
Lorraine Seale, Department of Indian Affairs and Northern Development
Laura Tyler, BHP Billiton Diamonds

1. *Selection of Chairperson*

Bill Ross volunteered to serve as the chairperson for the meeting. The purpose of the meeting as set out in the Resolution Agreement was reviewed and it was agreed to try to complete the meeting by 12 noon. It was agreed that BHPB should make its presentation first, followed by the Agency.

2. *Minutes*

The minutes of the May 18, 2006 were reviewed and accepted.

Moved by: Jane Howe
Seconded by: Lionel Marcincoski
Carried as there were no objections.

3. *BHPB Presentation on Environmental Management programs and operational projections for 2007*

Jane Howe reviewed BHPB's existing monitoring programs (including the Surveillance Network Program, Aquatic Effects Monitoring Program, and others). Baseline environmental studies are under way at the Jay and Fox pipes. Special studies such as the risk assessment from revegetation, LLCF water quality studies and others were mentioned. Four management plans are under review, with three more to be undertaken in the next six months, and four others within the year.

On the permitting side, road watering requirements are being considered for consolidation, a fisheries authorization for Sable/Pigeon/Beartooth needs to be extended, and a CEAA screening report may be required for the proposed windfarm. Upcoming permitting initiatives include renewal of the Sable/Pigeon/Beartooth water licence, renewal of related land use permits, renewal of the general exploration land use permit, and possibly a new fisheries authorization for the expansion of the Fox pit.

BHPB expects that there will be a public hearing on the Interim Closure and Reclamation Plan in the spring of 2008. The liability estimate and security will then be reviewed and another hearing may be required. BHPB has discussed internally the desirability of combining security requirements under a variety of instruments.

Lionel asked about the potential for the Jay pipe being incorporated into the mine plan. BHPB replied that this was not likely in the next three or four years as extensive feasibility and environmental work is needed first.

4. GNWT Report

Gavin More conveyed regrets for Tom Beaulieu. There has been a recent reorganization of Environment and Natural Resources where Gavin now reports directly to Tom. In the spring of 2007 there will be a new position responsible for the diamond mine environmental agreements. The intention is to have this person work more closely with other ENR staff to better coordinate input and to improve relations on the diamond mine environmental performance. Gavin will be taking a more direct role in the MPEMA discussions but will be away on medical leave February to April 2007.

5. Agency Presentation on Work Plan and Budget for 2006-7 and 2007-8

Bill presented a summary of the Agency work, expenditures and plans for 2006-7 and 2007-8 around the topic areas including board meetings, review of documents, the Separate Fund, communications and administration. He mentioned that Agency could and will do better at reviewing documents now that there is a full complement of Directors. BHPB's restriction of one Director at any of its recent meetings and visits has also hampered Agency efforts.

Jane Howe questioned the Agency's inclusion of report and plan reviews as part of Separate Fund activities. BHPB's view is that this Fund is to be used exclusively for public hearings. She suggested that the issue of the interpretation of activities covered under the Separate Fund should be referred back to the mediator, Bill Tilleman.

Bill stated that the Agency position on the use of the funds for preparation and submission of interventions to the WLWB whenever it has to make a decision on BHPB reports, plans or studies, was reviewed with the mediator before the Agency signed the Resolution Agreement.

The parties at the meeting agreed that the Agency would draft an issue statement for the mediator where the two positions would be laid out, public hearings versus interventions whenever the WLWB makes a decision, for circulation amongst the parties, and then DIAND will take the issue to Bill Tilleman.

Bill Ross mentioned that in response to Aboriginal and public concerns over the state of the Bathurst caribou herd, the Agency is beginning some preliminary work with EMAB and SLEMA on the concept of a joint initiative to undertake a comparative review of caribou monitoring programs, and that further discussions with BHPB on this would be helpful.

Jane Howe stated that the Agency may go over-budget if the current Separate Fund expenditures are not allowed and have to be allocated to other parts of the Agency budget. She questioned the authority and ability of the Agency to solicit and accept funding from sources other than BHPB. If the parties to the Resolution Agreement agree that a supplemental funding request from the Agency should not be accepted, then by definition in BHP Billiton's view, that activity is outside the mandate of the Agency. For greater clarification, she stated that it was proper and within the mandate of the Agency to provide information for the development of MPEMA.

Gavin More suggested that it might be possible and desirable to prepare a list of past experiences where the Agency received outside funding and then determine whether these activities were inside or outside of the Agency's mandate.

Bill Ross disagreed with BHPB's interpretation of the Agency's authority to solicit and receive outside funding. He said that the Agency's by-laws should also be examined in this regard. The issue of the Agency's independence has not come up recently but is critical to the credibility and effectiveness of the Agency.

Jane Howe stated that the Environmental Agreement is the paramount document and that the Agency by-laws may need to be changed to be made consistent with the Environmental Agreement and Resolution Agreement.

The parties to the meeting agreed that the issue of the authority of the Agency to solicit and receive funds from sources other than BHPB, should be referred to the mediator for an interpretation.

David Scott commented that he found the activity-based accounting by the Agency as a useful presentation for the purposes of planning and budgeting. He stated that BHPB's accountants are also interested in a presentation of finances using standard expenditure items such as travel, honouraria and other categories. BHPB indicated that it would like to further discuss this point with the Agency.

6. *Agency Presentation on Findings and Recommendations to date for 2006-7*

Bill Ross presented a compilation of Agency findings and recommendations from the 2005-6 Annual Report and outgoing correspondence, including outcomes where appropriate and known. He also indicated that the Agency had agreed to attempt to provide draft recommendations and rationale for the 2006-7 Annual Report at the May meeting, so that responses could be incorporated right into the text.

David Scott requested clarification of the Agency's last recommendation from its 2005-6 Annual Report where the Agency noted the need for greater investment in resources by BHPB to meet its environmental commitments. Bill Ross stated that BHPB's monitoring program reports are being submitted later and later each year. BHPB's staff appear to be dedicated individuals but the reporting is late and causing significant planning difficulties for the Agency in its budgeting, workplanning and reporting.

David Scott responded by stating that BHPB's environmental staff are indeed dedicated and often working through holidays. He noted that it is increasingly difficult to find the right people that are willing to move North. It is difficult for BHPB to compete with the Tar Sands projects. Jane Howe noted that is also harder to find people with analytical skills than those who can assist with straightforward compliance issues. It was David Scott's view that the quality of BHPB's reports has improved because it is also now taking responsibility for the work of its consultants. Allocation of scarce resources and risk come into play. BHPB is always interested in knowing what others think about its internal allocation of resources. Bill Ross noted that the Agency did not need to know all the details of the allocations, but the Agency's job is to provide oversight. Jane Howe mentioned that the complexity of the regulatory system and its requirements has increased over time. David Scott stated that BHPB recognized that it had not provided good 'customer service' regarding Ekati. Laura Tyler mentioned that BHPB had a good discussion with Sarah Baines and Zabey Nevitt at the WLWB about improving reporting.

Jane Howe stated that BHPB does intend to respond to the Agency's letter on deposition of Fox pit water into Cell D of the LLCF. Laura Tyler noted that the Agency's comments on closure and reclamation were carefully considered by the company, and incorporated where possible in the draft plan.

Lionel Marcincoski undertook to check on the status of the revised closure and reclamation guidelines that DIAND is preparing.

7. *Other Business*

The next meeting was set for May 24, 2007. Gavin More noted that GNWT would likely bring the North Slave Regional Superintendent to the next meeting.