

***Independent Environmental Monitoring Agency  
41<sup>st</sup> Meeting of the Board of Directors  
Yellowknife and Kugluktuk  
August 24<sup>th</sup> to 27<sup>th</sup>, 2004  
Summary of Discussion***

Revised: November 1<sup>st</sup>, 2004

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Directors

Jaida Ohokannoak     Tim Byers  
Bill Ross                 Tony Pearse  
Dave Osmond

Staff

Carole Mills                 Sean Kollee

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\*Note the meeting location was shared between Yellowknife, NT and Kugluktuk, NU.

**Information Updates**

Other than the regular analysis of BHPB reports and plans conducted by staff and Directors:

Tony, Tim, Dave and François participated in the Agency intervention at the water licence renewal hearing. Dave, Tim and Bill attended the AEMP third party review steering committee meeting in Yellowknife. Jaida helped review the plain English chapters of the draft Agency 2003-2004 annual report and other Agency correspondence. Carole:

- Attended the Akaitcho Assembly,
- Developed the Agency annual report; and
- Initiated preliminary work on a proposal for a reclamation workshop.

**Review of Agency 2003-2004 Annual Report**

A discussion of the process of director review of the technical report and plain language report for proofing purposes occurred. The target date for printing the annual report is September 22<sup>nd</sup>, 2004.

**Ekati Water Licence Renewal Public Hearing**

The Directors appreciated the speed at which transcripts were made available following the hearing and noted the hearing was very congenial. Environment Canada was noted for its reluctance to discuss the toxicity of cadmium and arsenic, about which the Agency pressed for a direct response. The MVLWB was appreciated for asking well-placed questions to the company. Most reviewers requested a shorter-term licence with the more conservative limits of the Sable, Pigeon Beartooth licence. Lutsel K'e in particular provided excellent interventions, which focused on consultation and the need for BHPB

to improve its performance. BHPB raised numerous objections to hosting annual public workshops to review the Ekati monitoring programs.

Action Item # 1 – Staff add to the Agency website a link to the water licence hearing transcripts.

### **AEMP Third Party Review Steering Committee Meeting**

Dave Osmond reported to the Directors that a meeting with the steering committee occurred on August 23<sup>rd</sup>, 2004. The Agency was provided with a near-final draft of the consultant report and consideration of next steps by the steering committee took place. It was noted that Barry Zajdlik (consultant) incorporated many of the previous reviewer comments that helped improve the report. There was general agreement with the content of the report and its recommendations to BHPB. It was agreed by the steering committee that the report would be submitted by the Agency to BHPB and the MVLWB with a covering letter. Contents of the letter are to include a statement that the steering committee accepts and generally agrees with the findings of the report. The MVLWB and BHPB will be requested to examine the recommendations contained in the report with the view towards improving the AEMP. The MVLWB was determined to be an addressee because it approves changes to the AEMP. The steering committee would find it desirable if Barry Zajdlik could meet with Rescan and consider changes to the AEMP as a further stage in this process.

Action Item #2 – Dave Osmond draft a cover letter for the AEMP third party review report and staff distribute to BHPB and MVLWB.

### **Snap Lake Working Group**

Carole noted that the MVLWB is developing a technical group to deal with Snap Lake environmental matters. It was observed that the Diavik project also has a technical group yet Ekati technical advice to the MVLWB has been treated on a more ad hoc basis. The Directors considered it possible that the Agency is being positioned in the role of third party technical review for Ekati due to a shortage of capacity among the regulators to conduct rigorous scientific review.

### **Abandonment and Reclamation (A&R)**

#### *A&R Working Group – Proposal from MVLWB*

Directors discussed the nature of the working group to be set up by the MVLWB to guide the modification of the A&R plan. The Directors noted a number of issues for further discussion contained in BHPB's July 23, 2004 letter responding to MVLWB's proposed working group, including:

- Scope - A request by BHPB that the working group focus on defining closure objectives and criteria. The Directors do not support this focus as it restricts the scope suggested by MVLWB, which was to help BHPB meet its requirements for an A&R plan under the water licences. Directors felt that it is BHPB's

- responsibility to consult on closure objectives and that the working group could suggest criteria, but cannot be delegated the role of the regulator.
- Consultation - Directors did not agree that membership should be restricted to those who intervened during the hearings.
  - BHPB requirements - BHPB asked for flexibility to ensure that its business plans were not affected by inappropriate closure decisions. The Directors felt strongly that the converse was more relevant, that appropriate closure decisions should not be adversely affected by business plans.
  - Aboriginal involvement - No provisions were made for Aboriginal involvement in the working group.

The Directors agreed that the Agency view about the MVLWB working group would be that the original MVLWB proposal is sound. The working group should take a broad approach to mine closure rather than focusing on specific aspects of the *A&R Plan*.

#### *Reclamation Workshop*

Carole had been authorized to develop a proposal for a reclamation workshop with DIAND at the previous Agency board meeting. She presented a draft budget for the workshop to be held sometime in December 2004 or January 2005 for the Directors to review. It was noted that the workshop is to be funded through DIAND with some minor staff in-kind contributions from the Agency. One further suggestion from the Directors is the inclusion of a knowledgeable person in the workshop as a contributor rather than as a facilitator. It was agreed that the overall objective of the workshop is to make progress toward reclamation objectives and closure criteria related to Ekati.

Action Item #3 - Carole will send a proposal to DIAND to host the reclamation workshop.
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#### **Follow up to Consultation Activities in Kugluktuk**

An open house workshop was held August 24<sup>th</sup>, 2004 at the Copper Room community centre in Kugluktuk as had been requested of the Agency by KIA. The Directors considered the public meeting in Kugluktuk to be a success and a highlight of Agency efforts to relay scientific information to Agency Aboriginal members and the quality and number of questions asked. Approximately 40 people, including many of the community's resource people and leaders, were present for the general presentation, and 20 stayed for the more technical sessions. The event took place over approximately three hours in addition to a high school visit that was also well received by a receptive audience of students.

Action Item #4 – Prepare a summary of consultation event in Kugluktuk with a view to making a similar event available to other communities.
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#### **Cumulative Effects:**

### *NWT Audit*

Carole mentioned that an audit of the Northwest Territories environment was supposed to have been done in 2003 under the MVRMA. DIAND is about to select the auditor for the project and has an oversight panel set up to review the findings. The Agency will likely be asked to participate in the audit in some manner.

### *Johnson and Boyce research*

François conducted a peer review of the paper with a post-doctoral fellow from his laboratory at the University of Saskatchewan and provided a copy to the Agency. The Directors decided to send the peer review to the report's author and others in the NWT with cover letter stating that we would like to see a presentation on this report and devote a significant amount of time to it.

Action Item #5 - Staff draft a letter to Chris Johnson with an invitation to attend the upcoming Agency board meeting. The letter may also be copied to others in the NWT including BHPB interested in the technical modelling aspects of cumulative effects monitoring.

## **YELLOWKNIFE MEETINGS**

### **Meeting with MVLWB (Sarah Baines)**

Sarah indicated that a consultant (Jay McNee) was hired by MVLWB to look into water licence effluent criteria for the Board including chloride. It is hoped that a draft licence will be out within the next week, with a short review period to provide a 60-day window for review by the DIAND minister. The MVLWB lawyer is currently reviewing the draft licence.

Sarah mentioned that the MVLWB has recently lost two regulatory officers but has since filled the positions. Laura Johnson has retired from her Board position and the Chairperson (Melody McLeod) is on personal leave. Stephen Nielsen is acting as the interim Chairperson.

Sarah plans to hold the first *A&R Plan* working group meeting on September 17<sup>th</sup> (\*note this was delayed by the MVLWB\*). Bob Wooley plans to chair the first meeting. Sarah will not be attending meetings between DIAND and others on closure criteria, such as the Agency hosted workshop, but summary notes should be forwarded to her. The Directors mentioned their appreciation for the original format and mandate of the working group.

The MVLWB does not want to make third party reviews a standard practice. The MVLWB relies on its distribution list to conduct its technical reviews. Any consultant could only look at the same information as the reviewers and there should be enough capacity within the federal government to do this.

The Directors commented on their concern that the MVLWB be able to access good technical expertise to help the MVLWB understand the issues. They noted that for other projects, MVLWB accesses more technical expertise than it does for Ekati. For example,

during other water licence hearings, the MVLWB had many consultants available to provide assistance yet they had only one consultant during the BHPB hearings. Directors noted that reviewers have less time and resources to do technical reviews than in the past.

The Directors mentioned to Sarah that the AEMP third party review document is complete and the Agency will report that we find the recommendations sound and advise BHPB and MVLWB to use the recommendations to improve the AEMP.

### **Meeting with BHPB (David Scott, Chris Hanks, Brent Murphy, Jane Howe)**

BHPB announced that two individuals are under consideration for the vacant Agency Director position (Ward Wilson and Anne Naith). BHPB also mentioned its new internal organization, David Scott - manager, environment, external and technical services, Brent Murphy- chief operations office site, and Chris Hanks - permitting, TK and mine closure. Jim Millard has resigned and now works for AMEC in Nova Scotia. Helen Butler will be moving to work on mine closure from the Yellowknife office where long rang mine planning group is based. Vacancies exist for environment field positions and Nahum Lee – environment technician will be moving to a more senior environment position.

The Directors asked BHPB for a copy of its Environmental Management System, similar to what was provided for ISO accreditation. Chris agreed he would provide it.

#### *Operations Update*

##### Highlights:

- Koala Pit mining will be completed in late 2005, Misery Pit before the freshet in 2005, Beartooth and Fox Pits will be in production in 2005, Panda underground first ore is expected in 2005 and the conveyer will be completed in 2006.
- Life of mine planning is underway and it is a 6-8 month exercise that re-evaluates pit designs, sequencing, economic assumptions, and the *A&R Plan*.

The Directors requested that the *A&R Plan* not simply grow in detail but actually grow in ability to influence mine plan decisions.

#### *Misery Atomization*

BHPB reported that stress cracks developed in both towers last winter and eventually the towers failed. They have since been repaired. The project is still in the commissioning phase and difficulties have been encountered with the supplier. Currently the long-term plan is to move the project to LLCF to test it with lower quality effluent. BHPB noted that the monitoring program would need to be changed once the project is moved.

#### *Dust suppression*

BHPB has permission to use DL10 on all roads other than the Misery haul road. The MVLWB approved temporary use of DL10 on the Misery haul road in 2004. DL10 is one of three products used by the GNWT (calcium chloride and water are others). Use of water is no longer effective as the site road network expands. Rescan is conducting a wildlife/dust suppression study with DL10 and EK35 (the only Boeing approved dust

suppressant). Use of DL10 on the runway would void the warranty of landing gear of the aircraft. Directors indicated they were more concerned about the dust than the suppressant used.

#### *Reports and other research*

- Nitrate toxicity study – peer review to occur in September. It was agreed that Pete McCart would be a good reviewer if he is available. BHPB's goal is to place results in peer-reviewed journal as one of the first such northern studies.
- Air Quality Monitoring Program – data from EC are due shortly and modelling will occur in the fall. No air sampling occurred in the region around cell B of the LLCF this summer, despite an earlier Agency recommendation to do this.
- Pit Lake study ToR due October 1<sup>st</sup>, 2004 (as part of MV2003L2-0008 licence)
- LLCF changes to water quality ToR in progress (non regulated parameters noticed to be increasing).
- Pre-feasibility study for floatation pilot plant for increasing recovery of small diamonds – project was successful and BHPB is reviewing reagents and recovery levels.
- July seepage report – circulated to reviewers
- Chloride tier 1 risk assessment – this risk assessment was conducted as part of the MV2003L2-0008 licence. BHPB is now considering a tier 2 risk assessment (tier 1 was a literature review, tier 2 would be substantially more rigorous and involve field testing).

#### *LLCF 5 year review*

Andy Robertson is conducting a review of the performance of the LLCF and a summary has been received by BHPB. Three options for moving forward will be proposed. BHPB also plans a series of technical meetings to consult interested parties. This first would be a tour to view the LLCF, review design assumptions, and examine its five-year performance, lessons learned and reclamation issues. The second is to review options and the third to conduct a multiple accounts analysis (BHPB's internal management technique for decision making among multiple stakeholders). Upon completion of this process one option would be selected and a new *WWPKM Plan* submitted to the MVLWB.

#### *A&R Plan*

During Ekati life-of-mine planning, closure planning is one component. BHPB internal standards require a Monte Carlo estimating process. BHPB is building an internal team that can develop the closure plan.

#### *Bearclaw draw down*

DFO is currently investigating harm to fish habitat when Bearclaw Lake was overdrawn. Pumps were left on by BHPB that should not have been. BHPB will send an aerial photo to the Agency on this matter.

#### *Ammonium Nitrate building*

Ongoing studies are occurring to resolve leaks of ammonium nitrate

### *Contaminated Snow Containment Facility*

This facility has been commissioned by BHPB.

### *Caribou Incident*

A caribou was caught in the airport electrical fence and died before BHPB became aware this happened. A wildlife incident report has been prepared.

### *Panda water diversion system*

A new water collection and diversion system is necessary to divert water from entering Panda pit to protect the underground workers. Currently BHPB pumps water at the bottom of the pit. A different system is necessary including external sumps. Directors indicated that they approved of such changes to the water collection system.

### *TK and Community activities*

An archaeology site tour is planned as well as a caribou diversion project using Inuksuit is in progress. The Lutsel K'e GIS project is continuing with BHPB support and matching funding from DIAND. David and Brent attended the NSMA assembly on behalf of BHPB. Other BHPB staff attended the Dogrib assembly. BHPB indicated that the Dogrib do not want to work collaboratively with BHPB.

### *Sarbanes-Oxley legislation*

BHPB discussed this new American legislation to protect investors following the Enron bankruptcy. BHPB internal auditors may wish to audit the Agency to meet the requirements of this legislation. BHPB also has decided the Agency budget surplus is not acceptable and suggested that the Agency should provide a budget in greater detail. BHPB indicated it would be willing to consider changes to the line items in the budget if no carryover of surplus is allowed. Accrual payments, where Agency work is done but BHPB does not pay bill until the next year, may also be possible.

Directors replied that an independent watchdog should not be subject to the internal auditing procedures of the company, nor should it be subject to internal financial pressures, because independence is the paramount concern. The suggestion that the Agency be subject to internal company accounting procedures is offensive and unreasonable. The Directors informed BHPB that in the event of a budget reduction the action of the Agency would initially be to approach the Federal and Territorial government as stated in the Environmental Agreement.

### *AEMP Independent Review*

The Directors mentioned that the steering committee is close to having a final report available for review. The steering committee intends to say that it generally agrees with the contents of the report and will request it be used to improve the *AEMP*. BHPB agreed to use the document in the spirit in which it was developed. The Directors also expressed their desire that Barry Zajdlik (report author) would be able to sit with Rescan to discuss his recommendations. BHPB agreed that time permitting this would be possible.

### *A&R Workshop*

The Directors mentioned that the Agency is in the process of planning a mine closure workshop with a focus on Ekati (to be funded by DIAND). The target date for the event is December 2004 or January 2005. The intent is to dovetail this workshop with the MVLWB working group and that company involvement is key. The workshop will be looking at applications of DIAND's mine reclamation guidelines to Ekati. Some focus on closure objectives would also occur. BHPB stated that for the workshop to be successful, mine closure criteria are needed as stated in its water licence. DIAND needs generic closure criteria, and BHPB would develop specific Ekati criteria. The Directors agreed to deliver the draft proposal to BHPB. Carole suggested a working group to assist in advancing the proposal and BHPB agreed to consider this.

### *Agency consultation in Kugluktuk*

The Directors mentioned the Agency visit and consultation in Kugluktuk to BHPB.

### *Agency requests for responses from BHPB*

Directors requested BHPB to comment on recent Agency correspondence such as:

- The request to redo the risk assessment to wildlife from kimberlite exposure
- The Agency consultant review of the BHPB waste rock seepage survey.

BHPB replied that it has yet to reply to the Agency on these issues.

### *Agency Annual General Meeting*

The Directors informed BHPB that the Agency plans to hold its AGM the week of November the 8<sup>th</sup> or 12<sup>th</sup>, 2004.

### **Follow up to Meetings with BHPB**

Action Item #6 – Send an advance copy of the letter to governments to BHPB regarding the outstanding budget issue.
Action Item #7 Submit budget request to BHPB representing costs to participate in LLCFC consultation process.
Action Item #8 Letter to Environment Canada regarding support for peer review of nitrate toxicity.
Action Item #9 Call Peter McCart to determine his availability to review the BHPB nitrate toxicity study.

### **Administration and Finance**

Carole noted that Agency expenditures up to August 2004 were greater than in previous years largely due to the Ekati licence renewal public hearing held in July that required an extra trip to Yellowknife by some Directors, but were similar to that of two years' ago (during Sable, Pigeon, Beartooth hearings). Carole mentioned two late invoices were received for participant funding to attend the Agency hosted environmental workshops in March. The Directors decided that the late invoices would be paid.



*Contracting and Expenditures Procedures Policy*

Carole drafted and François reviewed a revised contracting policy. Directors had earlier expressed a need for discretionary funding limits to be increased to \$2,000 to account for increased consultant costs when hiring technical advice. The Directors approved the policy and expense limit increase, with some slight modifications.

*Next Meeting*

42<sup>nd</sup> Agency board meeting to take place November 4<sup>th</sup>-8<sup>th</sup>, 2004 along with the 2004 Annual General Meeting of the Society Members to be held on November 5<sup>th</sup>.

Meeting Adjourned.

Summary of Discussion Approved by:

Bill Ross, Chairperson