

***Independent Environmental Monitoring Agency
29th Meeting of the Board of Directors
Yellowknife, Northwest Territories
June 6th – 7th, 2002
Summary of Discussion***

Directors

Red Pedersen	Tim Byers
Peter McCart	Bill Ross
Tony Pearse	François Messier
Bob Turner	

Staff

Zabey Nevitt	Robin Staples
--------------	---------------

June 6th, 2002

Meeting called to order by chair at 8:30 am

Agenda reviewed and accepted.

Information Updates

Red: noted that it is currently break-up in Kugluktuk. He mentioned that he attended the Kitikmeot Inuit Association (KIA) AGM in late April. A number of mining companies active in the region gave presentations during the meeting. The Agency was not asked to give a presentation, but the KIA expressed that it remains pleased with the performance of the Agency. Red also noted that water quality workshop proposed by EMAB in Kugluktuk has had to be postponed. In addition, he noted that DFO is doing some photographic surveys in the Coppermine River and surrounding area to determine if a local fishery (shellfish) could be supported.

François: noted that the Agency annual audit has been completed. François also mentioned that he participated on behalf of the Agency in the Mackenzie Valley Land and Water Board (MVLWB) public hearing for the Sable, Pigeon and Beartooth applications. He noted that the Agency involvement in this regulatory process was important and useful. Aboriginal groups and other interveners expressed their appreciation to Directors of the Agency for their effective participation in the hearing and technical support that they offered.

Pete: mentioned that he also participated in the public hearings for Sable, Pigeon and Beartooth. Since the last board meeting he has also corresponded with Tracy Williams from Lutsel K'e and reviewed some limnology data collected from Stark Lake as requested. This research project is partly supported by the BHPB fish habitat compensation fund.

Bob: began by noting that he has been actively involved in the discussions on the regional monitoring agency concept (i.e. one monitoring agency for all projects in the North

Slave). An October workshop is being planned by DIAND to discuss a framework and mandate of such a regional monitoring board. During a meeting on the Diavik Environmental Agreement, Diavik appeared supportive of regional monitoring approach with financial consideration. A potential regional structure for the Bathurst Caribou Management board is also being discussed, although this initiative is moving slowly as RWED's funding is very limited. The North Slave Metis Alliance (NSMA) has submitted comments to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) regarding an environmental agreement and monitoring agency for the De Beers project. Bob also noted that he attended the Sable, Pigeon and Beartooth public hearing on behalf of the NSMA.

Tony: mentioned that he also attended the MVLWB public hearings for the Sable, Pigeon and Beartooth applications and was involved in drafting of the Agency intervention. Tony also noted that he has been reviewing the Agency annual report articles being drafted by staff. He also attended the waste rock seepage and aquatic effects monitoring program re-evaluation workshops in May.

Tim: noted that he, as well, attended the MVLWB public hearings for the Sable, Pigeon and Beartooth applications. During the hearing he discussed concerns with interveners from Lutsel k'e and the Yellowknives Dene. Tim also mentioned that he visited the community of Lutsel k'e yesterday (June 5th) on behalf of the Agency to listen to concerns of the Environment and Lands committee. During the meeting, the committee noted that they look forward to the Agency's 2001 – 2002 annual report, and supported the addition of a plain English document. The committee also expressed interest in the ongoing review of BHPB's Environmental Agreement and asked for an update when further information becomes available.

Bill: noted that he attended the waste rock seepage and aquatic effects monitoring program re-evaluation workshops in May. He has also been reviewing the Agency annual report articles being drafted by staff. In addition, Bill mentioned that he is preparing a paper on the Agency and environmental monitoring at Ekati for a presentation in Hague, Netherlands during a meeting of the International Association for Impact Assessment.

Staff Update

Zabey summarized the activities of the staff since the last board meeting. Zabey went into further detail on some of the items on the staff activity report including: the Sable, Pigeon and Beartooth intervention, drafting of the Agency annual report, Environmental Agreement review, seepage review meeting, aquatic effects monitoring program re-evaluation, DeBeers technical sessions, and environmental review of mines workshop.

Following the staff update, François noted that the contribution of staff to the Agency's intervention for the Sable, Pigeon and Beartooth hearing, especially on the topic of reclamation, was excellent. Similar views were also expressed from other interveners in the hearing.

Business arising from last meeting

Directors briefly reviewed and discussed the action items arising out of the last board meeting. Specific action items that were discussed included Dr. Morin's review of seepage monitoring at Ekati, date of the Agency AGM and upcoming workshops, and DIAND inspector staffing.

Sable, Pigeon & Beartooth update:

Public Hearing:

Zabey briefed the Directors on the public hearing process and noted that the original (April 4th, 5th) public hearing was adjourned due to additional information being submitted by BHPB (i.e. Komex cost liability report and Rescan aquatic baseline study). Interveners were then given time to update their intervention and the Agency took this opportunity to provide further comments to the MVLWB, specifically on the Komex cost liability report. The public hearing was reconvened in May and at that time, Tony and François presented the Agency intervention (including the update) to the MVLWB.

Agency Directors discussed the procedure of the hearing and noted the following:

- The active involvement of the numerous lawyers at the hearing was a cause of concern, especially for some aboriginal interveners who could not afford lawyers or did not feel that they were necessary in such a technical public process.
- The Agency and other interveners were concerned with the confrontational and aggressive attitude sometimes taken by BHPB to a number of interveners during the hearing.

BHPB's closing comments:

Zabey noted that BHPB has submitted its written closing comments to the MVLWB following the public hearing and the interveners now have an opportunity to respond. Agency Directors discussed various aspects of BHPB's closing comments and noted specific issues that affected the Agency's previous submissions to the MVLWB and required further clarification by the Agency. These included:

- Security and a liability estimate that does not include progressive reclamation.
- Discharge criteria to be applied to Two Rock Lake, specifically ammonia and total nitrogen loading.
- Adequacy of BHPB community consultation previous to the hearing.
- The scope of the hearing, specifically in reference to road design and traffic management for the applied land use permits.
- Term of licence.
- Cumulative effects on wolverine.

Action Item #1

Staff to follow-up with Raymond Bourget (RWED) on improvements to food management practices at Diavik, winter road camps, and outfitter camps in an aim to limit impacts to wildlife.

Action Item #2

Staff to follow-up with Department of Sustainable Development in Kugluktuk to determine wolverine kills out of Kugluktuk in Lac de Gras region.

Fisheries Authorization and work plan:

Zabey briefed Directors on the development of a work plan for the ongoing Sable, Pigeon and Beartooth fisheries authorization negotiations. The following was noted:

- The work plan as proposed by DFO may change following feedback from BHPB.
- Comments from Agency and DFO were submitted to BHPB regarding fish habitat compensation concepts.

Action Item #3

Staff to follow-up with DFO and BHPB on the changes to the Sable, Pigeon and Beartooth fisheries authorization work plan.

BHPB - Agency Communications

Agency Directors and staff discussed BHPB's approach to communication with the Agency, regulators and community groups. The following was noted:

- BHPB's recent confrontational attitude (as noted earlier) is beginning to strain some current working relationships. A meeting between the Agency and BHPB management may be required in the near future to smooth out some of these issues.
- It is unclear who the BHPB contact is for the Agency. The Agency and others (e.g., regulators) often deal with BHPB staff from two different departments (i.e. regulatory – Yellowknife office and the on site environmental office). A single point of contact, which can coordinate communications with both departments within BHPB is required to improve communication between BHPB and various groups.

Five-year review of Environmental Agreement

Zabey gave an update to the Directors on the five-year review of BHPB's Environmental Agreement and noted the most recent review meeting between BHPB, DIAND, GNWT and the Agency took place on May 8th. The following was discussed at that meeting:

- Recommendations for change to the agreement provided by the three signatories and aboriginal groups.
- Approval mechanisms for recommendations that have been suggested.
- Triggers for amending the Environmental Agreement.

Agency Directors further discussed the approval mechanisms for suggested recommendations to the agreement and noted the following:

- Asking the Agency Directors to 'vote' on the recommendations for changes that have been put forward is an inappropriate request and should not be an Agency responsibility.
- Signatories have a duty to consult with the aboriginal society members of the agreement on these proposed changes.

Staffing issues

The Environmental Analyst, Robin Staples, regrettably informed Directors of the Agency that he has been offered and accepted a position with the Department of Indian Affairs and Northern

Development and thus has resigned his position with the Agency. He thanked the Manager and the Directors for the opportunity to work at the Agency. Directors thanked Robin for all his hard work, and wished him luck with his future endeavors. Directors also commented on the Robin's quality of work and excellent work ethic.

Action Item #4

Zabey to place an advertisement for the Environmental Analyst position in the newspaper and on the Agency website.

Seepage review and meeting update

Zabey briefed the Directors on the fall seepage survey report that BHPB submitted to the MVLWB and noted that Dr. Kevin Morin has performed a review of the seepage report. Kevin's review was discussed by the Directors and it was noted that it has been posted on the Agency website.

Agency Directors then discussed the May 2nd meeting that BHPB hosted on the results of the 2001 seepage survey report. The following was noted during the May 2nd meeting:

- Although not predicted during the original acid base accounting tests, some acid is being produced by the course kimberlite rejects area.
- In respect to waste rock management, BHPB has a full time geologist identifying rock types within pits. BHPB states that freezing also continues to be an important feature of the management of potential seepage from waste rock piles.
- A monitoring program for 2002 was proposed by BHPB (including more focused monitoring of the course kimberlite rejects area and at the contact point between the Panda toe berm and tundra).
- BHPB proposed the idea of amalgamating the seepage meeting with the February environmental workshops.

Agency Directors further discussed BHPB's proposal to combine the seepage meeting for 2003 with the February environmental workshops. They supported the idea with the condition that all relevant materials be available in adequate time for review prior to the workshop and a third day be added to allow for interactive and collaborative discussions.

Cost-Variance update

Zabey gave a brief update to the Directors on the status of the cost variance report and meetings and noted that the meetings between BHPB, DIAND, GNWT and the Agency are continuing but progress is slow. BHPB and DIAND appear to be in disagreement over the major principles and appropriate model for the security and cost liability estimate.

Agency Directors had a brief discussion on the BHPB cost liability estimate and the model that was used.

AEMP / PDC review update

Staff briefed the Directors on the re-evaluation of the Aquatic Effects and Panda Diversion Channel monitoring programs being initiated by BHPB. The following was noted:

- May 3rd was the first of a set of meetings to discuss the re-evaluation of these monitoring programs. Topics discussed at the meeting included: a review of the current programs (e.g., identification of key issues and data gaps), a comparison of other mining environmental monitoring programs, identification of methods and tools available to improve programs.
- The Agency and DIAND Water Resources have submitted comments on the aquatic monitoring programs and workshops, the refinements proposed by BHPB for 2002, and the re-evaluation process. DFO also had a consultant (Dr. David Levy) review BHPB's aquatic monitoring programs prior to the May 3rd meeting.

Agency Directors had a brief discussion on the statistical tests used by BHPB in the aquatic effects monitoring program, specifically the reliance on before–after–control–impact analysis rather than historical trend analysis.

Action Item #5

Staff to acquire the review done for DFO by Dr. Levy on the Aquatic Effects Monitoring Program.

Action Item #6

François to draft a letter or email to BHPB offering advice on appropriate statistical tests to be used in the Aquatic Effects Monitoring Program, specifically in respect to phytoplankton and zooplankton.

Compliance Issues

Zabey updated the Directors on recent non-compliance issues that have occurred at Ekati and noted the following:

- On September 23rd, 2001 discharge from King Pond into Cujo Lake (SNP station 1616-43) exceeded water licence limits.
 - Follow-up discussions with BHPB and a review of lab certificates for station 1616-43 indicate that this was likely an isolated event.
 - There was no discussion or explanation for this event in either the October 2001 SNP report or BHPB's 2001 Annual report. This type of non-compliance event has however been discussed in past BHPB annual reports.
 - John Witteman (BHPB) has committed to further investigation of this issue.

Action Item #7

Staff to follow-up on John Witteman's commitment to provide further explanation on the water licence non-compliance event at SNP station 1616 – 43.

- During the May 8th site inspection, the DIAND inspector observed that BHPB was dewatering Desperation Pond in preparation for spring freshet. No notification was provided to the inspector and this was in contravention of BHPB's water licence.

- BHPB was ordered to shut off the pumps on the May 8th site inspection. The DIAND inspector allowed dewatering to continue after proper notification was given.
- As both cofferdams at Desperation outflow were not completed prior to freshet, de-watering of Desperation Pond was required to prevent water from escaping into Carrie Pond (the receiving environment) during freshet.

Summer and Fall Planning

Agency Directors and staff discussed the various upcoming activities in the summer and fall of 2002. The following was noted:

Traditional Knowledge (TK) workshop:

- Is to be jointly hosted by the Agency and the Environmental Monitoring Advisory Board (EMAB).
- Some goals of the workshop include: promoting a working relationship between aboriginal parties, develop a process to facilitate the incorporation of TK into industrial projects, and the determination of how the Agency and EMAB mandates relate to TK.
- Planning has been initiated and a request for proposals for a workshop facilitator has been put in the local newspaper.
- Tentative dates for the workshop are July 10th –12th in Fort Rae. Some Agency Directors expressed concern that the tentative dates may not give enough notice to potential participants and that July may not be the most ideal time for such a workshop.
- Important that there is continuity in TK representatives for all involved groups. Agency Directors discussed the possible workshop participants (e.g., Aboriginal groups, EMAB and Agency boards, industry). Some Directors expressed concern that having industry and government participating at this time may not be positive and may side track some objectives (i.e. establish aboriginal consensus on TK needs).

Cumulative effects workshop:

- DIAND has indicated that funding (through a contribution agreement) is available to have the Agency and EMAB jointly host a cumulative effects workshop / seminar.
- Purpose and objectives of the workshop have not yet been determined.
- EMAB has set a tentative date in October for the workshop.

Other workshops / meetings:

- Agency annual general meeting to coincide with the proposed October cumulative effects workshop.
- An October workshop has been proposed by DIAND to initiate discussions on a regional monitoring agency / board for the North Slave geological area.
- MVEIRB also planning on holding a TK workshop in the fall.

Agency Directors had a brief discussion on the review process and potential Agency review of the DeBeers Snap Lake project environmental assessment report, specifically the cumulative effects section. It was noted that the Agency should offer advice for effectively managing cumulative impacts (e.g., cumulative effects of BHPB and Snap Lake projects).

Action Item #8

Directors and staff to perform a brief review of the cumulative effects section of the De Beers Snap Lake environmental assessment report.

BHPB's Annual Report

Zabey briefed the Directors on the review of BHPB's Environmental Agreement and Water licence annual report. The following was noted:

- BHPB has distributed the technical report, but not the plain English summary.
- The 45-day review period of BHPB's annual report will not begin until all groups (including aboriginal communities) have received both components of the report.
- The Agency has the option of writing a deficiency statement to the DIAND minister if it is felt that the annual report is significantly inadequate.

2001 – 2002 Agency Annual Report

Zabey gave a progress update to the Directors on the drafting of articles for the annual report and discussed the structure of both the plain English and technical report components.

Agency Directors reviewed the annual report recommendations and provided comments to staff.

Friday June 7th, 2002

Treasurer's Report:

François indicated that the annual audit had been completed, and the results showed an excess of revenue over expenditure of \$22,000. The audit also showed a cumulative fund balance of \$49,000.

The issue of over-contributions to the Agency from BHPB has been resolved as BHPB reduced this year's contribution by the \$33,900 previously overpaid by the company.

Meeting with DIAND (David Livingstone)

David Livingstone provided an update on the various developments and ongoing activities of DIAND with regards to regional monitoring. The following was noted:

Regional Monitoring Agency:

- Diverse groups, including aboriginal communities and industry, have expressed support for a monitoring agency or board that has a mandate to look at numerous developments and resources over a larger region such as the North Slave Geological Province.
- Although not originally receptive to the idea, recent discussions with BHPB indicate that the company is becoming more supportive of the move towards such a regional agency. There is a proposal to amend the Environmental Agreement for BHPB to allow for this transition.

- A contract has been awarded to Terriplan consulting to begin looking at options for the makeup, mandate, representation (community / technical) and functions of such a regional board. A discussion paper should be available in late summer or early fall.
- A multi-party workshop in October is being proposed to review this discussion paper from Terriplan. At this time, an attempt will be made to reach a consensus on the general concept and principles of such an agency.
- The West Kitikmeot Slave Study (WKSS) board remains interested in having key baseline research projects funded, but would like to move towards a cumulative effects research mandate role in the future. The WKSS board agrees with the suggestion that its research mandate could be integrated into a regional monitoring board, thus removing the need for the WKSS.
- The activities of the Bathurst Caribou Management Board may also be linked with a North Slave regional monitoring agency.
- Some industry representatives have, however, indicated that they do not want the focus of a regional board to become diverted. A public watchdog of environmental management of the large projects should remain a key role of such a regional agency, as these projects will likely be funding a significant portion of such a board.

Action Item # 9

Staff to send paper on regional monitoring and environmental management that was produced by the Agency to Terriplan.

Action Item # 10

Staff to follow-up with DIAND on the date of this multi-party workshop in October reviewing the discussion paper of Terriplan.

Cumulative Impact Monitoring Program:

- This NWT wide monitoring program may eventually be tied to a regional monitoring agency as its mandate gets developed.
- DIAND will soon be approaching the treasury board for approved funding to continue the next phase of this program (i.e. cumulative effects monitoring rather than baseline collection).

Following David Livingstone's update the Agency Directors and he had a general discussion on the regional monitoring agency approach. The following was noted:

- Data collection as part of a regional agency's mandate would constitute a significant difference from the mandates of the existing monitoring boards for Ekati and Diavik.
- A regional monitoring agency would need a reasonable budget to perform numerous functions. The existing formula of industry funding plus funding from the federal government (i.e. that money that is presently been used for cumulative effects impact monitoring / framework development) should result in a well-funded agency that costs proponents less overall to support.
- Monitoring and environmental management advice could be given earlier to industry and regulatory authorities even before projects have become licensed.
- Although joint monitoring programs between companies (e.g., BHPB and Diavik) are occurring, an agency or research body is still required to determine data gaps and make

monitoring programs compatible (e.g., monitoring protocols, data collection). A regional agency could also better coordinate smaller proponents monitoring programs.

- The possibility of a research role (similar to WKSS) would assist and help coordinate research initiatives that the GNWT and government of Nunavut cannot now afford to do.

Agency Directors also briefly expressed to David Livingstone their concern over the lack of a full time DIAND inspector for the BHPB project. David indicated that job offers have recently been sent out to the appropriate applicants and the inspector positions for both Ekati and Diavik should be filled shortly.

Agency Directors and David Livingstone then had a general discussion on the licencing process of Sable, Pigeon, Beartooth and the following was noted:

- The term of the licence for the Sable, Pigeon and Beartooth development should match the expiry date for the existing Ekati licence (i.e. ~ two years). The Agency and DIAND do not support the BHPB's suggested 12-year term. The rationale for a shorter term licence are as follows:
 - The new pipes should be part of a single integrated licence as soon as possible for easier management.
 - Flexibility to revise acceptable limits for various parameters (e.g., ammonia).
 - A significant amount of information (e.g., completed liability estimates, Long Lake effluent toxicity work, freezing and geo-chemistry work on waste rock piles) will be available in two years. This information will be of assistance to the MVLWB in reviewing the current licensed operation and establishing terms for licence renewal.
- Land leases are grand fathered and will not be reviewed by the MVLWB until they expire (i.e. 20 – 30 years).
- Further discussions on security between DIAND and the MVLWB have not taken place since the May public hearings. The Agency remains concerned that issues with security and liability still exist at this time of licencing process. An agreement between BHPB and others on cost-variance and total liability appears to remain far away. If the two cost liability models being employed use the same reclamation assumptions then the results should be similar. This stresses the need for a detailed Abandonment and Restoration plan to be updated on a frequent basis.

Date of next board of directors meeting October 2002 (to be tied to AGM and cumulative effects workshop).

Meeting adjourned.

Saturday June 7th and Sunday June 8th, 2002 – Agency annual site visit to Ekati -

Minutes Approved by

Red Pedersen, Chair