



Independent Environmental Monitoring Agency

P.O. Box 1192, Yellowknife, NT X1A 2R2 ▪ Phone (867) 669 9141 ▪ Fax (867) 669 9145
Website: www.monitoringagency.net ▪ Email: monitor1@yk.com

October 9, 2015

Joel Holder
Conservation, Assessment and Monitoring
Department of Environment and Natural Resources
Government of the Northwest Territories
P.O. Box 1320
Yellowknife NT X1A 2L9

Dear Mr. Holder

Re: Review of Security Held Under the Ekati Environmental Agreement

Please forgive the delay in responding to your August 4, 2015 letter that transmitted the Government of the Northwest Territories (GNWT) decision on the Security Deposit held under the Ekati Environmental Agreement. We have all been busy with the Jay Project Environmental Assessment.

We would like to thank GNWT for the opportunity to discuss the decision with Kate Witherly at our recent Board meeting on September 9, 2015. While the Agency is pleased that a decision has finally been made, the process to get there was flawed in a number of ways.

Procedural Fairness

The Agency participated in good faith in the financial security review pursuant to Article 13.2 of the Environmental Agreement. We made proposals, provided information and met with GNWT, Aboriginal Affairs and Northern Development Canada and Dominion Diamond Ekati Corp. throughout the process that lasted well over three years. The Agency met every deadline requested.

We were informed by your staff on March 11, 2015 that the Agency would no longer be involved as GNWT would not share its position with the Agency and that the Agency would no longer be involved in the process. We expressed our disappointment with this development on March 16, 2015 in a letter to GNWT, DDEC, AANDC and our Aboriginal Society members.

We noted in the July 31, 2015 decision made by your Minister, that several pieces of new information were used in making that decision that were not disclosed to the Agency including the following:

- Security proposal by Stratos, a consultant hired by the GNWT;
- Security proposal from the GNWT; and
- A January 2015 updated cost estimate from DDEC for studies and research in advance of closure.

During our meeting with Ms. Witherly, she committed to provide the Stratos report and the detailed rationale for the decision and she has done so. Ms. Witherly also committed to find out whether the January 2015 updated cost estimate from DDEC for studies and research could be shared with the Agency. We await this document and also request that GNWT provide us with a copy of its own security proposal and tell us the form of the Security Deposit as currently held. Once we have all of this information, the Agency will be in a better position to understand and comment on the GNWT decision on the Security Deposit.

In the future and to ensure procedural fairness, the Agency recommends that all submissions be made available to us during future Cost Variance and Progress Reviews conducted under the Environmental Agreement.

Advice for Future Reviews

During the meeting we had with Ms. Witherly, we committed to providing GNWT with our advice for future reviews of the Security Deposit held under the Ekati Environmental Agreement. The most recent review was the first done since the Environmental Agreement was signed in 1997. For a number of reasons, including the slow progress in the development of an up-to-date Interim Closure and Reclamation Plan that was finally submitted in November 2007, the Agency urges that there be a regular and timely review of the Security Deposit as required under the Environmental Agreement, at least every two years.

The Agency provided a number of ways to improve the review of the Security Deposit in our October 16, 2014 submission as follows:

- A more accurate estimate of financial security under the Environmental Agreement could be achieved with the following information which was requested of DDEC during the most recent review:
 - DDEC provide historical costs for the development, preparation and distribution of the Annual Report and Environmental Impact Report;
 - DDEC indicate when the listed management plans were last updated, the normal review cycle, and whether further updates are anticipated during the closure and post-closure period;

- DDEC provide a more up-to-date list of its permits and licences relating to environmental matters and whether in its opinion, additional security may be required under the Environmental Agreement to ensure compliance;
 - DDEC provide up-to-date cost estimates for the remaining reclamation research (including Traditional Knowledge studies);
 - DDEC provide cost estimates for its adaptive management research for fish exposed to hydrocarbons, dioxins and furans in Kodiak Lake sediments, clarifying the drivers of the Zone of Influence for caribou avoidance, and improving dust suppression at the site;
 - DDEC provide cost estimates for the Cost Variance and Progress Review of Environmental Agreement security; and
 - DDEC provide cost estimates for a worst case scenario such as overtopping of the Long Lake Containment Facility by processed kimberlite (cost associated with the remediation and monitoring of the Fay Bay spill would be a comparable example).
- It would be very helpful if all parties could become more familiar with RECLAIM as a tool for estimating reclamation liability. As we understand it, Version 7 is now in use even though the ICRP and the most recent Environmental Agreement security review used Version 6.2. GNWT should work with its consultant to ensure that RECLAIM is kept up to date and is publicly accessible. Some consideration should also be given to building in components or line items that relate to the split between land and water, and water licence vs. Environmental Agreement requirements. This would facilitate a better coordination of the review of securities held under the two different instruments.
 - The Agency is not aware of any explicit closure and reclamation guidance from GNWT as the new manager of lands and waters in the NWT. We understand that GNWT endorsed the joint AANDC-MVLWB Closure Guidelines but GNWT should consider working with the Mackenzie Valley Land and Water Board (MVLWB) to clarify or update that document to provide clearer policy direction.
 - It would be helpful to have a “lessons learned” review and/or meeting or workshop of interested parties now that the review of the Security Deposit has been completed for Ekati. It is our understanding that the MVLWB Working Group on Securities completed a similar report but it was not implemented due to the complexities and time constraints of devolution. It may be time to revisit that effort and re-establish the Working Group with a view to coordination of water licence and EA security. Some consideration might be given to how security reviews have worked for other mines or other jurisdictions (for example, the

[Initiative for Responsible Mining Assurance](#) and its [Draft Standard for Responsible Mining](#)).

The Agency remains willing and able to assist GNWT and DDEC on the issue of the Security Deposit under the Ekati Environmental Agreement to help build public confidence that there is a transparent process and sufficient funds to properly close the Ekati Mine.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Ross". The signature is fluid and cursive, written in a professional style.

Bill Ross
Chairperson

cc. Aboriginal Society Members
Jennifer O'Neill, Aboriginal Affairs and Northern Development Canada
Bob Overvold, Dominion Diamond Ekati Corp.
Ryan Fequet, Executive Director, Wek'eezhii Land and Water Board