



Independent Environmental Monitoring Agency

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James Arnott

Manager, Regulatory Development and Analysis, Mining and Processing Division

Environment and Climate Change Canada / Government of Canada

351 St. Joseph Blvd, 18th floor

Gatineau, Quebec K1A 0H3

Re: Proposed Changes to the Metal Mine Effluent Regulations (MMER)

Dear Mr. Arnott,

The Independent Environmental Monitoring Agency (Agency) has reviewed the proposed changes to the MMER. As the public watchdog for the Ekati Diamond Mine (Ekati mine) our review has focused on the changes specific to the inclusion of diamond mines to the MMER. In general, the Agency does not object to the inclusion of diamond mines to the MMER as it will provide some legal clarity around their ability to deposit waste such as tailings or processed kimberlite. The Agency does, however, have some concerns with how the MMER is to be applied in the Northwest Territories (NWT), which has a unique regulatory co-management system. Our concerns and possible solutions are outlined below.

Co-Management System of the Northwest Territories (NWT)

The regulatory system within the NWT is governed by the *Mackenzie Valley Resource Management Act (MVRMA)*. The MVRMA is founded on a co-management approach which allows for input from all stakeholders, including Aboriginal groups and governments as well as federal and territorial agencies, to guide regulatory decisions.

Aquatic Effects Monitoring Program (AEMP) and Environmental Effects Monitoring (EEM) Redundancy

The Ekati mine has a very detailed AEMP which, in general, is analogous to the Environmental Effects Monitoring Program (EEM) of the MMER. They are both intended to monitor and identify changes within the aquatic system resulting from the effluent discharged by the mine. Overall the AEMP is a robust, site specific and inclusive program. In the specific case of the Ekati mine, the AEMP has been rigorously reviewed and updated (every 3 years since its inception) to ensure that it is appropriately addressing site-specific water quality and aquatic life concerns identified since the program began monitoring over 20 years ago. These changes have been made with discussion, review and input from all stakeholders. The Agency views this ability to adapt based on multi-stakeholder input as a major advantage of the AEMP over the EEM. In this regard, the Agency is concerned that if the

proposed changes to the MMER come into effect the Ekati mine and other diamond mines within the NWT, will need to conduct both the AEMP and EEM requirements. This will result in a substantial financial and resource burden on the proponents and the regulatory system as a whole without providing any substantial increased understanding of the aquatic system. The Agency is concerned that in requiring proponents to conduct two essentially equivalent monitoring programs that it will take resources away from other important environmental, closure and reclamation research initiatives that may be identified.

Community Consultation

There has been little effort to discuss the proposed changes with any of the Aboriginal communities, government or organizations. It is part of the Agency's mandate to ensure that our Aboriginal Society Members are informed of issues that impact the Ekati Mine. The Agency believes that this lack of communication only acts to highlight our concerns with the MMER approach compared to the MVRMA co-management system.

Solution: Equivalency Agreement

The Agency believes an example already exists on which to build a reasonable solution. The federal *Canadian Environmental Protection Act* (CEPA) outlines a process by which regulations under the Act do not apply within a provincial or territorial jurisdiction. Section 10 of the Act allows for an 'Equivalency Agreement' to be signed between Canada and a province or territory where the jurisdiction has a regulation in place that is deemed to be 'equivalent' to the federal regulation. The Agency does not recommend that MMER simply adopt Section 10 of CEPA. However, the idea that industries should not be regulated to the same extent by similar but not identical legislation of both the federal and provincial or territorial governments is an appropriate one.

The Agency proposes that a possible solution for consideration could be that diamond mines would be included under the MMER. However, where the company can satisfy ECCC that their existing environmental effects and effluent monitoring programs satisfy each of the specific requirements of the new EEM, a formal legally-binding agreement could be entered into that essentially exempts the company from conducting separate monitoring programs. Ideally, the regulatory reporting requirements for each AEMP and EEM program could also be satisfied through submission of a single annual report. The details of the annual reporting requirements would need to be worked out through the equivalency discussions and not included specifically within the MMER.

The Agency thanks you for the opportunity to provide our input for your consideration. Should you have any questions concerning these comments, the Agency is pleased to discuss these at your convenience.

Sincerely,



Emery Paquin
Vice Chairperson

Cc: Dominion Diamond Ekati Corporation – April Hayward
Tlicho Government – Jessica Hum
Yellowknives Dene First Nation – Alex Power
Lutsel K'e Dene First Nation – Ron Griffith
North Slave Metis Alliance – Shin Shiga
Kitikmeot Inuit Association – Jared Ottenhof
Government of the Northwest Territories – Laurie McGregor
Indigenous and Northern Affairs Canada – Jennifer O'Neil