

***Independent Environmental Monitoring Agency
47th Meeting of the Board of Directors
Yellowknife, NWT
October 26th – 28th, 2005
Summary of Discussion***

Revised: February 22nd, 2006

Directors

Bill Ross	Dave Osmond
Tim Byers	Tony Pearse
Sheryl Grieve (Oct. 28 only)	François Messier (via telephone)

Staff

Sean Kollee
Kevin O'Reilly

MEETINGS WITH OTHERS

DIAND (David Livingstone)

Resignation of Director Anne Naeth

David mentioned there is now a possibility to appoint two new directors at the same time. This could expedite the process that has been slowed due to inability to agree among the signatories on the expertise required to fill the vacant director positions.

Dispute Resolution Process

David mentioned that further preliminary meetings are unlikely to solve the problem so DIAND intends to proceed with mediation (the main issue is independence of the Agency). The mediator will be contacted by DIAND and BHPB has asked for a pre-mediation conference that DIAND agrees should occur.

The Directors mentioned that the *Environmental Agreement (EA)* states that the signatories rather than internal funds of the agency will cover the cost of the process. DIAND believes the *EA* implies that BHPB should be covering the costs for Agency participation as part of its costs of doing business and may ask the mediator for a comment on this. DIAND also expects the Agency to be full participants during the mediation. DIAND believes the governments are not central to the debate and the dispute is something that requires a facilitator or mediator. Common ground between independence and complete autonomy must be sought. The Directors mentioned that while the dispute has been ongoing there have been some productive meetings with the company. DIAND is of the view that the participants should approach the mediation with open minds and that the mediator should work with the parties to set any commonly agreed terms and conditions. DIAND agrees that the mediator's report should be public. David advised the Directors to be as open with the mediator as possible, particularly on the issue of mandate. David believes that the mediator is there to work with the two

parties and did not encourage the Agency to hire a lawyer to be a party to the mediation although he felt having a lawyer provide advice may be desirable.

Multi-Project Environmental Monitoring Agency (MPEMA)

David mentioned a productive meeting took place with all the interested parties, although Diavik was absent. David Searle was there on behalf of BHPB and was very constructive. David discussed the tentative model developed by the MPEMA working group. The model is similar to the Snap Lake Environmental Monitoring Agency (SLEMA) and there will be a forum composed of an independent chair, industry representatives, and government and aboriginal parties. It has a communication and liaison role.

The plans for MPEMA are not final and are subject to change. A technical committee will be made of appointments by government, industry, and Aboriginal organizations and alternates. A forum of the government leaders or decision-makers will provide policy advice. A Secretariat supporting both the technical committee and forum would be established but has yet to be discussed in great detail. The budget and work plan have yet to be worked out. The technical committee would prepare a work plan and bring it to the forum. The governments would also be obligated to consult the forum prior to making an appointment to the technical committee.

Directors mentioned that an effective secretariat would be key in this sort of model to make MPEMA effective. David replied that the structure and make-up of the secretariat has yet to be developed. The technical committee would meet more often than the forum according to the working group. Not a lot of interest has been expressed about including the Tahera diamond mine in the MPEMA. There will be another meeting in January 2006 to review the final MPEMA terms of reference as it is being redrafted and then the product would go to the parties for ratification. David felt it would probably be another year before there will be a clear date for implementation of MPEMA.

Ekati Reclamation and Closure

The Directors asked David how actively DIAND would be involved in the closure planning process for Ekati. He replied that DIAND would be taking an active role. The reclamation guidelines are mostly completed and nearing finalization. The guidelines will then be released to the boards as guidance documents. Criteria and objectives are key and will be developed on a project specific basis.

Environmental Audit

David updated the Directors on the status of the Environmental Audit of the NWT. The report is likely to have some comments on the intervener funding issue. Parties to the audit will be receiving a draft copy of the audit to review for accuracy and, if they choose to, can comment on the audit (to the independent consultant). The audit subcommittee met to do a conformity review of the draft. There will be a three-week review and then it will be sent to the minister, release date set for first week in December.

DIAND (Ed Hornby)

Directors requested an update on DIAND's plans for filling the vacant Ekati inspector position. Ed mentioned that no inspections have been done since Julian Kanigan left the position several months ago. He wanted to visit Ekati prior to heavy snow cover but bad weather prevented him from doing so. Two vacancies exist in the Yellowknife office and the reason it has taken as long as it has to replace Darnell McCurdy is that Ed is looking to staff the entire team. Filling inspector positions at DIAND requires a specialized skill set, and takes a great deal of time and effort to develop. Ed felt that the end of the fiscal year would be a reasonable target for staffing the Ekati inspector position. Until then, an inspector from within the department will be sent. Directors encouraged Ed to fill the position with a competent candidate quickly and mentioned the good relations among the Agency and past inspectors. Ed advised the Directors that he would visit Ekati prior to Christmas. On the subject of inspector training he mentioned that short courses are provided to inspectors. There are 15 inspectors in the south Mackenzie District and eight in Yellowknife. They inspect all kinds of projects such as highways and land and water permits.

Enforcement of the *NWT Waters Act* and water licences is the responsibility of DIAND. The inspector also reviews reports submitted under the water licences along with the SNP data to ensure compliance. The substance of SNP data on unregulated water quality parameters is not an enforcement issue. The Directors mentioned that they have not seen any indication of inspectors determining if reports are arriving on time. Ed replied that DIAND cannot prosecute if the plan is ruled to be inadequate. There is no recourse if a plan is required within a specified timeframe and then it is not approved. His interpretation is that where the MVLWB requires a plan to be submitted after a licence is issued, that there was no requirement for this information or data up front and therefore if a plan is inadequate, it is not enforceable under such a licence.

DFO (Dorothy Majewski)

Dorothy mentioned she is replacing Julie Dahl who is on leave. Directors welcomed Dorothy and noted their good relations with the department. Examples of past interactions between the Agency and DFO include review of the AEMP, PDC and fish habitat compensation issue.

Dorothy updated the Directors on current DFO activities related to Ekati:

- Prelude Lake fish habitat enhancement project – DFO reviewed the final report and decided not to go ahead with stage two (the over-fishing issue requires management not habitat enhancement)
- Stark Lake fisheries habitat enhancement study – 2001 and 2002 data summary report remains outstanding
- Mathews Lake – restoration work completed in 2004 (vegetating sections of the shoreline and connecting a manmade pond to Mathews Lake). Improving spawning habitat and removing fuel drums from Mathews Lake and replacing them with rock also occurred. The first year of monitoring is now complete and the report is due shortly.

- Bernard Harbour – this site is located near Kugluktuk. The objective is to restore the char run in a landlocked lake. Baseline work was completed in 2004 and additional work was done in 2005.

Directors mentioned the preference in communities to improve damaged areas rather than attempt to construct habitat in natural areas. Dorthy mentioned that garbage removal was never the intent of the program but could be done as part of a balanced approach to habitat compensation. The No-Net Loss policy was originally intended to deal with smaller and less remote projects where small losses can add up to a significant harm to the fishery and there are greater opportunities for restoration due to the extent of southern development.

Closure planning of Ekati was discussed with regard to DFO's position on the future of the Panda Diversion Channel (PDC). Dorthy mentioned that PDC was part of agreed upon habitat compensation and there are difficulties in developing measurements of productivity. DFO attempted to ensure that fish are spawning and feeding in the PDC as part of the no-net loss policy. Changes to the PDC monitoring program have led to a reduction in fin clips and ovary collections. Gill netting was not done in 2005 in Grizzly Lake due to absence of fish. Fish diet monitoring is complete. Additional monitoring in the PDC in 2005 includes analyzing young of the year for lipids (winter survival). BHPB added enhanced habitat structures to the PDC, primarily for invertebrates. The Directors asked what process was used to make the changes and Dorthy replied that it was a professional judgement issue. DFO has not had recent discussions with BHPB on pit closure or pit lakes. The Directors discussed the Pigeon Culvert as an example of impacts to terrestrial and aquatic environments being out of balance and the use of the culvert as a movement corridor for caribou that could harm the stream. She committed to reporting back on this issue. Dorthy replied to a question from the Directors that the diversion of streams around the Cell A catchment area was not likely to be significant to DFO from a habitat perspective. She also agreed to provide more information on DFO's follow-up to the Bearclaw Lake drawdown event. DFO was also offered time on the agenda of any environmental workshops organized by the Agency, to present results of any of its research, habitat work, or monitoring programs.

Jacques Whitford (Nick Lawson)

Nick described his assignment from the MVLWB (to do an independent review of the Ekati water licence process by interviewing the MVLWB staff, interveners and the applicant). He is about halfway through the process. The MVLWB would like to learn from the process and to receive recommendations for future licencing processes. Nick started work about two weeks ago on this project and any findings may be applied to the Diavik licence by the MVLWB. His final report will be made public.

Nick began the contract with a review of the public registry material and timeline. He had no previous involvement with the water licence other than providing a comment on the Lorax report for DIAND. Nick identified some themes or issues and used this to put together some questions for consistency of organizing the material from the interviews. An interview record will be prepared for each session and sent back for verification. The report to the MVLWB will not be attributed to individuals or organizations. The only

distinction will be to note whether a comment was from an intervener, staff or the applicant. Nick will send the interview record to Kevin for Agency approval. The deadline for the final report is November 7th or 8th, as the Board wants the work done quickly. The Directors provided Nick with feedback on their views related to the water licence process and suggested improvements for the MVLWB to consider.

MVLWB (Sarah Baines)

Water Licence Discussion

The Directors asked Sarah to explain the term of the new Ekati water licence. She replied that the MVLWB wanted to see another renewal before the end of mine life (given as 2015). The formation of a Wekeezhii Land and Water Board (WLWB) was a consideration in looking at the term. The entire Board will meet to discuss the trans-boundary matter related to the Ekati file. The new staff of the WLWB will likely job-shadow with MVLWB staff for a suitable period.

The Directors asked if the level of management plan detail is required by the licence or by MVLWB policy. Sarah replied that the requirements for the plans are the same as in the old licence but the next tailings management plan for BHPB will be the first case of the ‘results based’ approach. BHPB’s consultants are working on the plan and the outcome will have to be reviewed at the Board level. Additional licence requirements contained in the licence include some increased plan requirements, a fish palatability study and cumulative effects work related to water quality.

Reclamation and Closure Planning Working Group

Sarah noted that the MVLWB recognizes BHPB’s internal corporate deadlines and will cooperate, but not fast track, the approval of the closure plan. The working group will meet to discuss the terms of reference (ToR) and circulate the draft. Another meeting of the working group would take place and the ToR would be sent to the MVLWB. BHPB would then begin work on the plan. BHPB was under the impression that the working group would be active during that period. However it would not be chaired as a formal working group meeting until the plan is submitted. Sarah has proposed that meetings take place on each section throughout and then have the plan submitted. Some funds will be made available for inclusion of Aboriginal parties via telephone, but there is no participant funding.

Other Issues

The Directors asked Sarah what they could do to make the Agency more helpful to the MVLWB. Sarah encouraged the Agency to do the technical review that the MVLWB may not have the resources to do, work in the spirit of cooperation and provide regular feedback of any comments or concerns. Engagement of the regulatory officers as early in the process as possible makes it easier for them to deal with issues as they are raised. The Directors requested Sarah to discuss what would happen if a licensee would not address the concerns of a reviewer satisfactorily. Sarah replied that the request could be forwarded to the Board or company for further action. When the Agency submits a consultant report it needs to include a cover letter to MVLWB stating the obvious management implications or possible requests of the Board rather than assume the Board

will make links on its own as it is dealing with a high volume of material. This also makes sure that the Agency comments are on the record.

The Directors mentioned the possibility of tailings mobilization from a few episodes per year of high wind and implications from the licence that states tailings must be contained. Sarah suggested that this issue would be better raised with agencies that could be involved such as DFO if deposition of contaminants occurred into water, or with the DIAND inspector.

MVLWB seeking of consensus

The Directors commented that by appearing to seek consensus on contentious issues through multiple iterations of paper exchanges or meetings that the MVLWB was failing to provide the proper direction to staff. Sarah replied that the Board does not require consensus of reviewers and can issue licences with answers to reviewer requests or conditions for the company. Staff attempts to gain consensus could be a process issue as the Board cannot provide directions when it does not know what is happening on a particular file (i.e. before something is submitted to it).

Sarah mentioned she will be providing a timeline of when BHPB submissions are due under the new licence and it would be available on the MVLWB website. Lessons from the Con mine closure plan working group and work planning on files that other organizations follow will be incorporated into the Ekati process. The Directors considered sending a letter from the Agency to the MVLWB on how the process could be run and how the working group can develop the content and feed into what the Board needs to make a decision.

BHPB (John Bekale, Helen Butler, Laura Tyler, David Scott) and Alexco (Brad Thrall)

BHPB was welcomed and introductions to new visitors made. BHPB stated that this would be the first meeting on developing a process for consultation toward the closure plan. It described the schedule of consultation over the next month and examples of other BHPB reclamation projects. The process of mine planning was reviewed and options for closing three mine components (pits, waste rock piles and the tailings facility) at Ekati were discussed.

Issues raised by the Agency with regard to BHPB consultation techniques and the closure planning process:

- Add to the 'why consultation is important' slide that the company wants the input of the communities.
- If BHPB wants buy-in to the consultation process from Aboriginal groups, then it should adjust its choice of language; "people HAVE TO know", "they MUST understand", etc signal that BHPB is in control of the process and not pursuing collaboration
- Use of IACT – it is a vehicle to have technical people around the table at one time, not a decision-making or regulatory body.

- ‘Objectives’ needs to be discussed prior to ‘options’. It is important to understand this at the company level. The primary assumption is DIAND guidelines will drive objectives but much more is needed, particularly the level of generality of the guidelines compared to the specific Ekati infrastructure that objectives must be developed for. Need for clear definitions and consistent use of terms such as goals, objectives, options and closure criteria.
- To avoid confusion and to keep track of what the options are intended to achieve, BHPB should head each option slide with the goal for closing the component in question.
- Interval rating system of the MAA used in the LLCF process has some problems (see Bill’s earlier comments on this issue maybe attach these at the end of this letter).

Objectives for open pits:

Biologically productive
 Establish clean water habitat
 Traditional use
 Receptacle for wastes from the mine
 Cost effective
 Reasonable closure period
 Walk away (goal)
 Self-sustaining
 Minimize perpetual care requirements (an objective applicable to all mine components)

Waste rock objectives

Safety for animals

Waste rock options

Doming and shaping to ensure freezing
 Use as backfill for pits
 Capping source for LLCF

LLCF objectives

Safe for wildlife
 Ecologically productive
 Maintain downstream water quality in perpetuity
 Maintain fish in cell E
 Physical stability

LLCF options

Not completed discussion of.

Next steps:

Clarify terminology
 Look at objectives then options

Site visit next summer
Review options again
MAA process
Need for further Agency input into process, and consideration of objectives and options

Election of Officers

The Directors discussed the re-election of the vice-chairperson and chairperson. They also decided to appoint Tony Pearse as acting secretary-treasurer until Jaida Ohokannoak is well enough to indicate her interest in returning to the position. This discussion was subsequently confirmed by Francois Messier, as a formal decision of the Board.

Insurance

Kevin pursued office insurance with Arctic Insurance Brokers. Arctic Insurance Brokers attempted to gain coverage from a number of carriers. BHPB was contacted and asked for advice and it recommended Lakeshore insurance. ING insurance no longer does environmental coverage anymore. Encon was contacted to write a special policy and this would cost \$5k and it was estimated that Lloyds would be able develop a policy for between \$3-5k.

Website

The use of a Yellowknife based contractor to re-develop the Agency website was discussed. The staff were provided with approval to enter into an agreement with the contractor at the quoted cost of the service.

Training

Tony was authorized by the Directors to attend a mine reclamation conference.

Next Meetings

The 48th Board Meeting was scheduled for the week of January 15th – 18th, 2006. Following the 48th Board meeting the next two meetings are likely to be held in February or March and in April (annual report meeting).

Summary of Discussion Approved By,

-Original Signed By-

Tony Pearse, Acting Secretary Treasurer.