

BHP Billiton Diamonds Inc.
Operator of the EKATI Diamond Mine



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August 29, 2008

Wek'èezhii Land and Water Board
P.O. Box 2130
Yellowknife, NT
X1A 2P6
Attention: Ms. Violet Camsell-Blondin, Chair

Dear Ms. Camsell-Blondin:

Re. Response to Comments on the Sable Pigeon and Beartooth Water Licence Renewal Application (MV2001L2-0008)

BHP Billiton Diamonds Inc.'s (BHP Billiton) has prepared the attached responses to comments on the Sable Pigeon and Beartooth Water Licence Renewal Application. This is a substantive step in the renewal process and BHP Billiton has provided a response to all of the comments received. There are several common elements within the detailed responses that are brought to your attention in this letter.

Preliminary Nature of Review Comments

Many of the reviewers have categorized their comments as preliminary in nature and have referred to future comments that they may provide. BHP Billiton provided the Renewal Application 17 months prior to expiry expressly to provide time for resolution of issues prior to the Public Hearing. While it is understood that the renewal process has more steps to work through, BHP Billiton finds the number and pervasiveness of these forward-looking references from the reviewers disconcerting. BHP Billiton believes that there are risks to the effectiveness of the renewal process to having a large uncertainty around the finality of review comments. BHP Billiton understands that the Board intends to issue a renewal workplan in September and anticipates that this will lend greater certainty to the review comments received. BHP Billiton is committed to working diligently to resolve issues prior to the Public Hearing.

Effluent Quality Criteria

BHP Billiton's proposed changes to the Effluent Quality Criteria (EQCs) is raised in the review comments. Many of the review comments use wording of "less stringent", "increased levels" or "dropped parameters". BHP Billiton simply wishes to remind the Board of its sincere commitment to protecting the environment from harm. BHP Billiton's "Zero-Harm" philosophy

and 10-years of successful operating history demonstrate this commitment. A recent example of BHP Billiton putting this commitment into action is the decision to withhold effluent release from the LLCF through the summer of 2008 in respect of the CCME interim guideline for nitrate. In short, BHP Billiton is not proposing EQCs that are "less stringent"; rather BHP Billiton believes that EQCs, a fundamental parameter for mine operations, should be based on defensible information applicable to the site and that they should be protective of the environment. BHP Billiton is open to the concept of a technical workshop focussed on the proposed EQCs for the SPB Water Licence if the Board feels that this would be helpful.

Question of Licence Amalgamation

Many of the reviewers refer to the question of licence amalgamation, a matter that has been previously commented on to the Board by all parties and for which the Board has not yet issued a decision. Some reviewers appear to be using the Board's request for comment on the Renewal Application to further their arguments on licence amalgamation. In other cases, reviewers appear to be predating their review comment on an assumed amalgamation. BHP Billiton has approached these review comments on the basis provided by the Board in its request for comments; namely that these comments are related to the Renewal Application itself. BHP Billiton has not commented further in these responses on the question of licence amalgamation. BHP Billiton's position and argument against amalgamation are contained in BHP Billiton's previous submissions on this question dated June 6, 2008, June 18, 2008 and July 14, 2008.

Term of Licence

It is apparent that some reviewers feel that their sole opportunity to review the terms and conditions of a Water Licence is through a renewal process. BHP Billiton has consistently requested terms that extend to the end of the mine life and notes that the Board has the ability to grant terms of up to 25 years. BHP Billiton believes that the established practice of short terms for large-scale mining projects such as EKATI hampers long term mine planning, puts at risk future mining operations and prevents the operation, by the Board, of the most efficient regulatory process. A term to end of mine life provides the benefit to all parties that the fundamental terms and conditions of the licence are locked-in and will survive changes in mine operator, Board governance or other external factors that may change with time. An interested party may petition the Board for changes to terms and conditions at any time. Frequent renewals are not necessary to provide such opportunities to stakeholders.

BHP Billiton trusts that you will find the attached responses helpful. BHP Billiton remains committed to working constructively with all parties to this Water Licence Renewal. Please contact Eric Denholm, Environment Superintendent - Traditional Knowledge and Permitting, at 669-6116 if you have any questions.

Sincerely,
BHP Billiton Diamonds Inc.



Eric Denholm, Environment Superintendent – Traditional Knowledge and Permitting
EKATI Diamond Mine

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

Tracking Number	Comment ID	Topic	Review Comment	Company Response / Proposed Revision	WLWB Response / Recommendations
A: Department of Fisheries and Oceans (DFO) Comments – Received August 6, 2008					
1	DFO - 1	Effluent Quality Criteria	BHPB is proposing that the EQC's for the main Ekati water licence be used for the SPB water licence with the exception of ammonia. As per the June 30, 2008 joint federal letter sent to the WLWB, DFO supports amalgamation of the two existing water licences. If amalgamated the current EQC's for both water licences can remain separate. DFO does not agree that the SPB EQC's should be made less stringent by making them the same as those in the main licence. The EQC's have been developed for the SPB water licence more recently than the main licence and are based on more current information. They are also consistent with EQC's developed for the Diavik Diamond Mines Inc. (DDMI) water licence.	<ol style="list-style-type: none"> 1. BHP Billiton is not suggesting that the EQC's in the SPB WL be made "less stringent"; rather BHP Billiton is suggesting that the EQC's, a fundamental parameter for mine operations, be based on defensible information applicable to the site and that they be protective of the environment; the EQC's from the Main WL and the proposed site-specific derivation for ammonia are defensible and protective. 2. BHP Billiton disagrees with DFO's statement that the EQC's in the SPB WL "are based on more current information"; the EQCs for the Main Licence were more recently confirmed during that licence renewal; additionally, BHP Billiton is not aware of the defensible scientific information that would support the application of these EQC's at the Sable site; BHP Billiton 	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>requests that DFO be asked to provide supporting information for their statement; BHP Billiton would then be in a fair position to consider the information and provide a considered response.</p> <p>3. The DDMI EQCs were developed in the context of its specific location and circumstances. The Diavik Mine is located on East Island within Lac de Gras whereas the EKATI mine is located inland within a series of smaller lakes and streams.</p>	
2	DFO – 2	Effluent Quality Criteria	<p>It is the opinion of DFO that parameters currently being reported on should not be removed from the water licence. Instead it would be useful to have parameters such as nitrate and molybdenum added now that they have been identified as increasing significantly in the 2007 AEMP report.</p>	<p>The trends identified for various parameters, such as nitrate and molybdenum, documented in the 2007 AEMP Report are the result of conditions specific to the different inputs into the Long Lake Containment Facility (LLCF). The identified trends are located within the Panda/Koala watershed flowing from the area around the EKATI site and the Long Lake Containment Facility. These trends are not transferable to the Sable site, which will have no processed kimberlite or camp activities. The trend in molybdenum, for example, is directly</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>related to processing of kimberlite from the Misery pipe and this has no bearing on future activities at the Sable site.</p> <p>These and other parameters (regulated and non-regulated) are appropriately included into the Watershed Adaptive Management Plan, which has been proposed as a means of providing a documented early-warning framework, including parameters that are not EQC's.</p>	
3	DFO – 3	Effluent Quality Criteria	<p>In the DDMI water licence renewal process, ammonia management was a topic of much interest and discussion. The expert panel retained by the WLWB recommended that the EQC for ammonia (after 2007) be 6 and 12 mg/L (maximum average concentration and grab sample respectively). This was determined to be achievable with no possibility of exceedance over the life of the mine. The new EQC for ammonia proposed by BHPB is below the maximum average concentration established for DDMI for pH's higher than 7.0 but higher for pH's above 7.0. The grab sample EQC exceeds that set for DDMI in all cases where it is listed in BHPB's ammonia EQC table. For instance, in the case of a pH of 7.1 the limit is 9.9 mg/ L higher.</p> <p>The proposed EQC for ammonia is based on the <i>US Environmental Protection Agency 1999 Update of Ambient Water Quality Criteria for Ammonia</i>. On page 84 of the document there are several points listed by the EPA concerning the criterion. One of</p>	<p>1. The DDMI site-specific derivations of ammonia are only applicable to the Diavik mine. The Diavik Mine is located on East Island within Lac de Gras whereas the EKATI mine is located inland within a series of smaller lakes and streams. The A154 pit at the Diavik mine contains more water than any of the EKATI open pits, which was a factor in the site-specific derivations for the Diavik mine; the particular ammonia concentrations that resulted from the site-specific derivations for the Diavik mine can not be assumed to be appropriate for the EKATI</p>	

			<p>those points is that “partly for statistical reasons, the Criterion Continuous Concentration is based on a 20 percent reduction in survival, growth, and/or reproduction. Whether the maximum acceptable percent reduction should be lower or higher than 20 percent under a set of conditions is a risk management decision. ECs corresponding to other percentage reductions can be calculated using the parameter values presented in Appendix 6.”</p> <p>In comparison, the new CCME protocol uses a 5 percent threshold for chronic toxicity. It is the opinion of DFO that any changes to the current EQC for ammonia should only be made if it is not practically feasible for BHPB to meet the criteria after reviewing all possible treatment options. Neither USEPA or CCME guidelines should be used as “pollute up to limits.”</p>	<p>mine.</p> <ol style="list-style-type: none"> 2. The current EQC for ammonia is not based on considerations of net environmental benefit where the risks and environmental impacts (fuel use, emissions, etc.) of treatment methods can be considered against the net benefit to environmental protection. The current EQC for ammonia does not consider the well-established toxicity relationships with pH and water temperature. It is a matter of fundamental fairness to the licensee that clear and defensible rationales are developed for EQCs that consider the net environmental benefits. 3. Water quality guideline derivations for various jurisdictions, not just North America, are often based on sublethal toxicity testing data reported as EC20 values (which is allowed for in the new CCME protocol). The intent is, with the exception of humans and endangered species, to protect 	
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				<p>populations of organisms, not individual organisms. The reference to 5% in the CCME document is not an effect level (e.g., 5% reduction in reproduction); it refers, rather, to the 5th percentile of species inferred to be most sensitive to a given toxicant (i.e., it assumes that only the 5% most sensitive species may experience a given level of effect). The USEPA ammonia WQG document follows a similar approach. With respect to the applicability of an EC20 effect level, aside from the intent noted above, EC5 and EC10 values are only rarely statistically distinguishable from controls in most toxicity tests (USEPA 1999); therefore, these data are typically not useful for the purposes of establishing WQG - they are within natural variability or "noise". Irrespective of the specifics of WQG derivation methods, the selection of an environmental quality criterion for ammonia for</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>the Sable Pit discharge was based on a series of conservative (i.e., protective) assumptions about the site and discharge characteristics and was intended to protect the receiving environment against adverse effects.</p> <p>4. BHP Billiton does not use the USEPA or the CCME Guidelines as “pollute up to limits” as is suggested by DFO; BHP Billiton uses these Guidelines and the associated site-specific protocols and toxicity databases as general low-level indicators of aquatic health and starting points for site-specific derivations, which is consistent with their intent.</p>	
4	DFO – 4	Effluent Quality Criteria	<p>BHPB is proposing that the ammonia EQC table be updated to be consistent with the Initial Dilution Zone (IDZ), if it is approved by the WLWB, for chloride. It is DFO’s recommendation that an IDZ not be approved and that EQC’s should be met at the outlet of Two Rock Lake. An IDZ could potentially cause impacts to fish and fish habitat within Horseshoe Lake.</p>	<p>BHP Billiton has not proposed wording to update the ammonia EQC table to be consistent with a possible future determination of IDZ; BHP Billiton has proposed wording that recognizes that BHP Billiton may apply to the Board for such an update to the ammonia EQC table at some time in the future after an IDZ may be determined. This is an</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				important distinction that BHP Billiton believes may affect DFO's review comment. BHP Billiton requests that DFO be asked to re-consider their review comment in this context.	
5	DFO – 5	Effluent Quality Criteria	DDMI has been instructed to look at toxicity testing using a northern fish species (round whitefish). For consistency between operations, DFO recommends that BHPB be encouraged to do the same type of investigation using a northern fish species that is found in Horseshoe Lake. This could provide an opportunity for collaboration between the two operations.	BHP Billiton notes that, to its knowledge, DDMI has not successfully conducted such a test program to date. BHP Billiton has previously conducted a program of testing for nitrate toxicity that attempted to incorporate the use of a local fish species; this work demonstrated the extreme difficulties inherent to such a test program. BHP Billiton has consistently found that the fish species that are well represented in the general toxicity database are appropriate and useful for site-specific derivations. The data provided from first-time or "one-off" testing of new species has no statistical power to be used in a technically defensible derivation. This is why BHP Billiton believes that testing of new species is a research project that is appropriate for development by government, with industry support.	
6	DFO – 6	Plan Review Periods	BHPB has proposed shorter time frames between submission of plans to the WLWB for approval and	BHP Billiton's rationale for this proposed change remains clear;	

BHP Billiton’s Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			the scheduled commencement of construction. Depending on the specific item to be reviewed, the reduction in time may be a concern for some parties who want to provide comments but are prevented from doing so based on the shorter review period.	detailed engineering design drawings for construction are for the purpose of the Board verifying that the final designs conform to the previously approved designs and plans. This step should not require additional public input and the timeframe proposed would assist construction of the project, given the tight time period within which construction can occur in the North.	
B: Environment Canada (EC) Comments – Received August 6, 2008					
7	EC – 1	Effluent Quality Criteria	EC does not support the changes to discharge limits and regulated parameters proposed by BHP Billiton (BHPB). We note that the criteria set in this licence will regulate discharges into a pristine watershed, and there will need to be consideration of site-specific protection rather than simply adopting the criteria from the main licence. Rather than deleting regulated criteria, EC recommends the addition of molybdenum and nitrate to the list of regulated parameters, and recommends limits on phosphorus loading be set.	<ol style="list-style-type: none"> 1. The Koala watershed was a “pristine watershed” with similar aquatic habitat and species composition as Horseshoe. The Main Licence was issued to regulate discharges into the Koala watershed and BHP Billiton has demonstrated that the EQC’s in the Main WL have been protective of this area; therefore BHP Billiton questions Environment Canada’s assertion that these EQC’s should not be used at the Sable site because the Horseshoe watershed is pristine. 2. See tracking no. 2. 3. Environment Canada 	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>provides no rationale for inclusion of a limit on phosphorus loading; there will be no sources of phosphorus at the Sable site and, therefore, no rationale for its inclusion as an EQC parameter.</p> <p>4. BHP Billiton agrees that there should be consideration of site-specific protection and has proposed this approach for ammonia.</p>	
8	EC – 2	Effluent Quality Criteria & Dilution Zones	<p>With respect to the use of an Initial Dilution Zone when setting ammonia limits, it is acknowledged that any wastewater discharges will result in alterations to the immediate receiving environment. However, such mixing zones should be minimized in extent, and not be used to allow higher concentrations to be discharged at end-of-pipe.</p> <p>In the event amalgamation of the two licences is directed by the Board, we would anticipate maintaining separate limits for the two discharge sites.</p> <p>We recommend that further discussions on effluent quality criteria take place in a technical workshop or similar venue, prior to the public hearings.</p>	<p>1. BHP Billiton does not view or use the concept of an IDZ as a means of allowing higher concentrations at end-of-pipe. BHP Billiton's approach to inclusion of reference to a possible future IDZ is to acknowledge that the site-specific derivation provided for ammonia is based on protecting against chronic toxicity in the receiving environment; this level of protection is commonly applied at the downstream extent of an IDZ (i.e., Diavik mine); it is on this basis that BHP Billiton has proposed wording that recognizes that</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>BHP Billiton may apply to the Board for such an update to the ammonia EQC table at some time in the future after an IDZ may be determined.</p> <p>2. In this response to comments BHP Billiton requests additional clarification and support of comments from various reviewers; BHP Billiton suggests that it would be beneficial to receive these clarifications prior to any technical workshop in order for those workshops to be of most benefit to all parties.</p>	
9	EC – 3	Submission Timelines	Shortened timelines for submission of plans which are subject to review (e.g. G.2.a), G.3.a) and J.1.) will not be feasible for reviewers nor for scheduled Board meetings which require lead time for review of materials.	See tracking no. 6.	
10	EC – 4	Surveillance Network Program (SNP)	<p>EC generally supports changes proposed to the SNP, but would like to differentiate between Sable Pit minewater and the upper cell of Two-Rock Lake Sedimentation Pond. Adding a station in this cell would be preferable to moving the pit station.</p> <p>Rationale for deletion of the hydrology stations should include a listing of data collected, and establish that sufficient information has been collected (or will be – identifying where requirements are set out) to manage withdrawals at closure.</p>	<p>1. See tracking no. 33.</p> <p>2. The SNP currently requires monthly monitoring of the lake levels in Ursula and Exeter Lakers during the open water season. Ursula and Exeter Lakes are intended to be source lakes for pump flooding of pits after closure and BHP Billiton has assumed that the intent</p>	

			<p>BHBP recommends removal of <i>Part D.6 Air Quality Monitoring</i> as being outside the jurisdiction of the water licence; however, the linkage between aerial emissions and runoff into surface waters would warrant inclusion of this monitoring (dust fall, snow core sampling) in the water licence.</p>	<p>of this monitoring is to support development of the Closure and Reclamation Plan. Monitoring of lake levels in Ursula and Exeter Lakes is not related to mine operations or to monitoring compliance with the terms and conditions of the Water Licence, the primary purpose of the SNP. BHP Billiton agrees that it is important to understand the natural variation in water levels in source lakes for reclamation work. However, the sampling program, locations, frequency and duration to gather the needed information should be described in the Closure and Reclamation Plan and the associated Reclamation Research Plan. It is in this way that the information collected is most appropriate to its intended use. The current open-ended requirement for monthly monitoring is not based on a current assessment of the information needs to support the Closure and</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>Reclamation Plan, A current assessment of needs and a determination of the best way to gather the desired information is being undertaken through the ICRP Working Group for inclusion into the Board-approved ICRP and accompanying Reclamation Research Plan.</p> <p>3. BHP Billiton believes that regulation of air quality is not within the jurisdiction of the Wek'eezhii Land and Water Board. Neither the MVRMA nor other statutes give the Board jurisdiction over air.</p>	
11	EC – 5	Renewal Licence Wording	EC would like to commend BHPB for the constructive approach taken in providing suggested changes to licence terms along with rationale. There will need to be discussion of some of these changes, and we would hope to resolve many of the minor issues in advance of public hearings.	BHP Billiton requests that Environment Canada be asked to provide specific issues for discussion and response prior to interventions for the Public Hearing. BHP Billiton provided the Renewal Application 17 months prior to expiry expressly to provide time for resolution of issues prior to the Public Hearing.	
C: GWNT – Environment and Natural Resources (ENR) Comments – August 6, 2008					
12	ENR – 1	Term of Licence	BHPB is requesting 5-year renewals for the Land Use Permits and a term to 2020 for the Water License. ENR does not support the 11-year term proposed by BHPB for the Water License Renewal. The license	The reasons provided by ENR for desiring a 7-year renewal are consistency with past recommendations and the ability for	

			<p>renewal process as it exists allows stakeholders an opportunity to offer the Board technical advice on matters related to our respective mandates. The process allows for the incorporation of new information, technologies and valuable lessons learned in the regulatory regime. Therefore, ENR recommends the term of the BHPB Sable, Pigeon, Beartooth water license be seven years, in order to maintain consistency with GNWT recommendations from past reviews of license terms.</p>	<p>stakeholders to provide technical advice to the Board.</p> <ol style="list-style-type: none"> 1. BHP Billiton has consistently requested terms that extend to the end of the mine life and notes that the Board has the ability to grant 25-year term. The established practice of short terms for large-scale mining projects such as EKATI hampers long term mine planning, puts at risk future mining operations and prevents the operation, by the Board, of the most efficient regulatory process. A term to end of mine life provides the benefit to all parties that the fundamental terms and conditions of the licence are locked-in and will survive changes in mine operator, Board governance or other external factors that may change with time. 2. All stakeholders to the EKATI project are regularly able to provide technical advice to the Board and effect changes to Management Plans throughout the term of the licence. This takes place through the numerous 	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				technical reviews of management plans and technical reports. Further, an interested party may petition the Board with technical advice at any time. Frequent renewals are not necessary to provide such opportunities to stakeholders.	
13	ENR – 2	Part A - Scope & Definitions	The term 'Inspection' is included numerous times within the license. It would be worthwhile to define 'Inspection' within the <i>Definition</i> section of the license, and distinguish differences between inspections carried out by Inspectors vs. Engineers.	BHP Billiton does not object to the suggested concept if the Board finds it to be helpful. However, BHP Billiton does not see that a new definition is necessary.	
14	ENR – 3	Part B - General Conditions (1m & o)	These summaries should clearly note what significant results and changes were identified in the programs/studies etc., and the subsequent adaptive measures to address issues if required.	BHP Billiton does not see that changes are required to the wording proposed in the Renewal Application to achieve this.	
15	ENR – 4	Part C – Conditions Applying to Security Requirements (1a)	ENR would encourage the Board to ensure that adequate time is provided in the licenses for the completion of any reclamation deposits that may be required.	BHP Billiton feels that 30 days is adequate time for posting of reclamation deposits and further feels that a longer time frame imposes an unfair financial penalty on the licensee because the funds that are required to support the security are unfairly removed from the licensee's cash flow for exploration or other future-looking possibilities.	
16	ENR – 5	Part F – Conditions Applying to	ENR believes that the inclusion of 'specific threshold limits' and its subsequent management action is important to remain in the Water License. As	BHP Billiton disagrees that formal adaptive management-style triggers are appropriate for one-time	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

		Construction (2b)	suggested by BHBP, perhaps its association with operational activities is also appropriate.	activities such as construction.	
17	ENR – 6	Part F – Conditions Applying to Construction (3a)	BHPB's proposed change from 90 days to 30 days "prior to construction at Sable or Pigeon Pit for the approval of a <i>Waste Rock and Ore Storage Management Plan</i> " may not be an adequate amount of time for Board approval. ENR recommends 60 days.	BHP Billiton acknowledges ENR's recognition that 90 days is an overly long timeframe but disagrees with the suggested 60 days, per the rationale provided in the Renewal Application.	
18	ENR – 7	Part F – Conditions Applying to Construction (6)	Construction records should be included with the submission of as-built drawings.	BHP Billiton disagrees, per the rationale provided in the Renewal Application. BHP Billiton requests that ENR be asked to provide a rationale for their suggestion that may assist with understanding the intent.	
19	ENR – 8	Part F – Conditions Applying to Construction (11)	BHBP has proposed numerous changes to the Effluent Quality Criteria based to site-specific studies. ENR trusts Reviewers with water quality mandates, such as Environment Canada (EC) and Indian and Northern Affairs (INAC), have conducted a thorough review of the rationale provided for these proposed changes. ENR supports recommendations provided by EC and INAC.	See responses to INAC and EC (tracking nos. 27 and 7, respectively).	
20	ENR – 9	Part I – Conditions Applying to Studies (3)	Part G, 11 (d) proposed changes does not include criteria for Chloride but rather states "to be determined". Part I.3 states that "a Chloride Study is to be submitted for Board approval within eighteen months of this License being issued". Is BHPB able to provide a date for when decisions on criteria will be presented to the Board?	BHP Billiton provided to the Board in 2004 a report on a site-specific Tier 1 Ecological Risk Assessment for chloride. This report underwent technical peer review. BHP Billiton subsequently conducted more in-depth research and filed a report with the Board in January 2007 that proposed an EQC for chloride for the SPB Water Licence. The Board's	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				technical review of this document raised the question of whether there may be a toxicity-hardness relationship for chloride that should be considered. Following from that review BHP Billiton initiated further laboratory testing to investigate a possible toxicity-hardness relationship and the Board's review was deferred to the availability of those results. The laboratory work has been completed and at this time the synthesis and technical analysis of results is underway. BHP Billiton anticipates providing a technical report on this stage of testing to the Board before the end of 2008, at which time it anticipates that the Board's review will re-commence.	
21	ENR – 10	Part K – Conditions Applying to the Aquatic Effects Monitoring Program	ENR trusts and supports recommendations from reviewers with water quality mandates, on the proposed changes to the AEMP.	See responses to those reviewers.	
22	ENR – 11	Part L – Conditions Applying to Abandonment and Reclamation	ENR supports the proposed change of the term 'Abandonment' to 'Closure'.	Acknowledged.	
23	ENR – 12	Surveillance Network Program (D)	BHPB notes "that Air Quality is not regulated under the Mackenzie Valley Resource Management Act or the NWT Waters Act; therefore, should not be	See tracking no. 10(3). ENR's reference to federal authorities in this regard is unclear.	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>included as a component of this license". The MVRMA Section 58.1 states, "The Wek'eezhii Land and Water Board shall regulate the use of land and waters and the deposit of waste so as to provide for the conservation development and utilization of land and water resources in a manner that will provide the optimum benefit generally for all Canadians and in particular for residents of its management area". The definition of environment in the MVRMA includes air. The majority of air emissions and dust that are emitted or deposited into the atmosphere fall back to the surface and can contribute to impacts to land and water.</p> <p>ENR feels that since the Ekati Mine Site is a federally regulated facility, it is incumbent on the federal regulatory authority or authorities to ensure that all potential environmental impacts resulting from project activities are managed and mitigative measures implemented and therefore this condition should remain in the Water license.</p>	BHP Billiton requests that ENR be asked to clarify this statement.	
D: Indian and Northern Affairs Canada (INAC) Comments – Received August 6, 2008					
24	INAC – 1	Definitions	<p>BHP Billiton has proposed to remove some definitions and make changes to other existing terms defined in this licence. INAC cautions that changing any definitions in this licence may cause conflict and generate confusion with regard to the definitions in the main licence (MV2003L2-0013). This issue would be negated by amalgamating the two water licences</p>	<p>BHP Billiton has carefully reviewed the two licences and has found that, in some cases, the current wording in the SPB Licence causes conflict with the Main Licence. In these cases, BHP Billiton has proposed wording changes to the SPB Licence that eliminates such conflict. BHP Billiton has previously stated in its letters dated May 16, 2008 and July</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				14, 2008 that the proposed wording changes combined with a term to end of mine life is a superior means of achieving INAC's stated goals for amalgamation.	
25	INAC – 2	Security	BHP Billiton has proposed that security be tiered to better align security requirements with the proposed development timetable of the mine. This is a reasonable request; however, BHP Billiton must note that INAC maintains security for the entire mine site and must ensure it holds enough security for all infrastructure at the site, regardless of the authorization. This can be achieved by preparing security schedules that dictate increments in security as the project proceeds. A single schedule developed for an amalgamated licence for the mine would ensure a clear and transparent process. Furthermore, this would improve the security assessment and reimbursement process following progressive reclamation activities	BHP Billiton acknowledges that INAC holds reclamation security for the entire site and as the holder of the security has agreed that BHP Billiton's request for tiered security is reasonable. BHP Billiton disagrees with INAC's assertions in regard to the proposed amalgamation of the licenses. Published INAC Policy recognizes the return of securities for progressive reclamation work completed.	
26	INAC – 3	Plan Submissions	BHP Billiton has proposed a shorter time period for the submission of plans and reports. This request will infringe on the time allotted to the review and refinement of these plans and reports. INAC is concerned that such a reduction could either jeopardize the involvement of some reviewers or risk delay in BHP Billiton's implementation and construction dates. However, we are open to discussing the present submission dates with BHP Billiton and the Board	BHP Billiton acknowledges INAC's recognition that these timeframes should be discussed. BHP Billiton feels that the timeframes proposed in the Renewal Application are reasonable.	
27	INAC – 4	Effluent Quality Criteria	Effluent Quality Criteria – BHP Billiton has proposed to change the Effluent Quality Criteria (EQC) for the Sable Pigeon Beartooth (SPB) renewal to the less	<ol style="list-style-type: none"> 1. See tracking no. 1(1). 2. See tracking no. 1(3). 3. BHP Billiton feels that the historic 	

			<p>stringent criteria found in the main EKATI license (MV2003L2-0013). INAC does not agree with this approach and feels that the EQC should remain as stated in the SPB license. At this time, INAC is not prepared to comment on specific EQC's for the proposed renewal, however it would like to highlight some of the main issues. The general concerns with the proposed changes are as follows:</p> <ul style="list-style-type: none"> • The SPB EQC's should remain as written in the license. The values are based on the Diavik Diamond Mine EQC's which were subject to considerable scrutiny and debate. • The current data collected shows that none of the parameters in the license are approaching the current EQC's. • INAC feels it is not appropriate to remove parameters from the water license as it will reduce the ability to provide long term trends. In addition INAC feels that certain parameters such as Nitrate and Molybdenum, which have shown elevated levels, should be added to the license. It is understood that these parameters are discussed in the Adaptive Management Plan (AdMP), however it is our opinion that they should also be added to the license. • Ammonia values are based on US EPA numbers, which assume a 20% effect level. This does not appear to be an appropriate effect level. <p>INAC's position on the current EQC's, in both licences, is already on the record and before the Board for their consideration (see the coordinated</p>	<p>effluent quality at the LLCF (1616-30) is not a valid comparison to the EQCs proposed for the SPB Water Licence; EQCs should be based on defensible information that is protective of the environment.</p> <ol style="list-style-type: none"> 4. See tracking no. 2. 5. The ability to track long term trends in water quality is not restricted to parameters listed as EQCs and this is not a valid rationale for inclusion of parameters as EQCs. A broad suite of water chemistry parameters, well beyond those parameters that are listed as EQCs, is collected for SNP samples according to the requirements of the SNP. For example, the SNP requires analyses of final effluent from Two-Rock Pond (SNP 008-Sa3) to include nutrients (8 or more parameters), major ions (10 or more parameters), ICP metal scan (19 or more parameters) and field parameters (6 or more parameters). This is defined in Part B.5 of the SNP for the SPB Water Licence. Data for all of these parameters (43 or more) are available for assessment of 	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			comment letter dated June 30, 2008). Pending outcome of the amalgamation request, INAC will further assess BHP Billiton's proposal to change the existing EQC's and respond in its written intervention.	<p>long term trends regardless of whether or not they are listed as EQCs.</p> <p>6. See tracking no. 3(3).</p> <p>7. BHP Billiton requests that INAC be asked to provide specific issues and scientific support for discussion and response prior to interventions for the Public Hearing. BHP Billiton provided the Renewal Application 17 months prior to expiry expressly to provide time for resolution of issues prior to the Public Hearing.</p>	
28	INAC – 5	Specific Term	Inclusion of the term “discharge” – BHP Billiton is proposing to include the term discharge to a number of clauses identified in Part G. The inclusion of this term may influence the original intent of these clauses. Changes in this regard also raise concerns regarding the consistency between the two licences.	<p>1. BHP Billiton has proposed that the defined term “Discharge” be used in strategic locations as a means of clarifying the intent of the licence. If INAC has contrary information regarding the original intent of the clauses in question, BHP Billiton would welcome the opportunity to review same.</p> <p>2. BHP Billiton's proposed wording changes remove potential conflicts by strategically harmonizing wording related to discharge terms and conditions where this is helpful such as is</p>	

				proposed for Part G, Item 12.	
E: Independent Environmental Monitoring Agency (IEMA) Comments – Received August 6, 2008					
High Priority/Concern					
29	IEMA – 1	Part B – s. 1(o)	<p>We note the proposed change to producing only a summary of the AEMP in the Annual Report. The Agency is of the view that there should be a requirement in Part K for a firm delivery date for the full AEMP monitoring results each year. We would suggest a date of March 31st each year. The summary in the Annual Report should focus on any significant findings or changes and should contain the details required under Part K, s. 7.</p>	<p>The proposed change is intended to align the wording of the licence with the established practice of providing an annual “AEMP Report” as a standalone report and also providing a brief summary of the key findings of the AEMP in the Annual Report required under Part B of the Water Licence. The annual “AEMP Report” that contains the information required under Part K of the Water Licence typically consists of several thick binders and is too large and detailed to realistically be included directly into the Annual Report under Part B. This is the established practice that BHP Billiton feels has worked well and that has been accepted by the Board for a number of years. BHP Billiton suggests that the Board (and IEMA) refer to the approach taken for preparation of the 2007 AEMP Report and the 2007 Annual Report under Part B as examples of the intent for the proposed wording change. See also tracking no. 78 in regards to the timing of report submission.</p>	

BHP Billiton’s Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

30	IEMA – 2	Part C – s. 1(b)	The proposed wording by BHPB would remove the discretion of the Board to request additional security outside of the Interim Closure and Reclamation Plan process. There may be circumstances where the Board may believe it is necessary to revise security between review and approval of a new ICRP, or in the case of an unexpected or temporary closure. We believe the Board should retain such an option.	BHP Billiton feels that the existing wording allows the Board the flexibility to institute changes to the required reclamation security. BHP Billiton feels that it is unlikely that this would occur however the current wording implies this as a possibility. Changes to reclamation security should be made only to reflect material changes to the approved reclamation plan. The proposed wording does not restrict the Board’s ability to adjust reclamation security but clearly links any such changes to a clear process through the approved reclamation plan. As stated in the Renewal Application, BHP Billiton views this as a matter of fundamental fairness to the licensee.	
31	IEMA – 3	Part G – s. 11(d)	Proposed changes to the Effluent Quality Criteria (EQC) include dropping several metals. The Agency is of the view that it would be premature to drop cadmium, chromium, lead, zinc, and nitrite in the absence of further work on modelling these contaminants as part of the LLCF modelling initiative and the adoption of the Watershed Adaptive Management Plan. The Agency believes that BHPB should provide further justification for the large increases proposed for arsenic, copper and nickel EQCs.	BHP Billiton’s proposal is not to “drop” parameters from the list of EQCs. Neither is BHP Billiton proposing “large increases” in concentrations. BHP Billiton’s proposal is to establish EQCs protective of the environment that are based on demonstrable and defensible information. The LLCF Water Quality Model is specific to the LLCF and the various inputs into the LLCF such as process plant discharge (inclusive of	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>kimberlite ore from the Fox and Misery pits) and underground mine water. The model is not applicable to the Sable site where there are no processing or camp facilities. The Watershed Adaptive Management Plan (WAMP) provides an early warning mechanism for many parameters, intending to ensure that protective action is taken before an effect level is reached in the receiving environment. However, resolution of the WAMP is not a prerequisite for setting rational and defensible EQCs for the SPB Licence.</p>	
32	IEMA – 4	Part I	<p>This entire section needs to be revised to reflect the current status of the Pit Lakes Studies and the ICRP Reclamation Research Plan, the tundra soil study and the ongoing proposal for a chloride discharge criterion. We note that all of these studies are now overdue from the original licence deadlines.</p>	<ol style="list-style-type: none"> 1. The requirement of Part I, Item 1 for a Terms of Reference for a Pit Lakes Study was fulfilled and implementation of those studies has been adopted into the ICRP Working Group process. 2. A study report was submitted to the Board in 2007 (September 28) in response to the descriptive requirement of Part I, Item 2. The Board issued a decision on the report (January 24, 2008) that requested further 	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>clarification, which BHP Billiton is developing.</p> <p>3. A proposal for chloride discharge criterion per Part I, Item 3 was submitted to the Board in January 2007. This review is on-going.</p> <p>IEMA's comment that "this entire section needs to be revised" does not provide specific items to which BHP Billiton can respond. BHP Billiton requests that IEMA be asked to provide specific comments or proposed wording for this section with supporting rationale to which BHP Billiton can fairly provide a response.</p>	
33	IEMA – 5	<p>Surveillance Network Program – s. A & B(3)</p>	<p>We note that BHPB has agreed that removal of sump stations from SNP for Pigeon (Pi2) and Beartooth (Be2) is not appropriate. We also agree that it would be more important to change these stations to monitor all minewater rather than from individual sumps. We note that BHPB proposes to drop the future Sable sump or minewater station (Sa2) in favour of a station in the upper portion of Two Rock Sedimentation Pond. We would prefer that the minewater from Sable pit be sampled and that if BHPB wishes, another station could be added in the upper portion of Two Rock Sedimentation Pond. Whether this is done as an SNP station or as part of the AEMP is not a great concern, so long as the information is available.</p>	<p>For the Sable site, BHP Billiton feels that a single internal upstream sampling station is adequate because of the small size of the facility. BHP Billiton believes that the best sampling location is in Two-Rock Pond as proposed in the Renewal Application. However, if the Board feels that monitoring of the Sable Pit minewater is of greater interest, then BHP Billiton suggests that station Sa-2 be defined as minewater for Sable Pit and that the sampling frequency be described in clause SNP B(4). In this case, BHP Billiton would accept IEMA's</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				suggestion that any additional sampling in Two Rock Pond could be discussed for inclusion into the AEMP.	
34	IEMA – 6	Surveillance Network Program – s. B(4)	The Agency supports a reduced monitoring frequency but believe it should be weekly rather than monthly.	The sampling frequency prescribed in SNP B(4) applies to minewater from individual pit sumps, which is internal to the minewater management systems (i.e., none of this water flows to the receiving environment). BHP Billiton believes that an intense sampling frequency such as weekly is appropriate for final effluents that flow to the receiving environment, such as location 1616-30 in the Main WL, but not to internal minewater flows.	
35	IEMA – 7	Surveillance Network Program – s. B(5)	Sampling should be daily during discharges, rather than weekly, for either the upstream or downstream end of Two-Rock Pond (but not necessarily for both). This should ensure that any pulses of greater-than-normal contaminated water can be captured.	BHP Billiton strongly disagrees with the suggestion that daily sampling is appropriate for effluent discharge. BHP Billiton has proposed wording that will harmonize the sampling requirements with the same requirements that have been successfully implemented under the Main Licence at location 1616-30.	
36	IEMA – 8	Surveillance Network Program – s. D(6)	The Agency is of the view that the Board has jurisdiction with regard to any waste (as defined in the NWT Waters Act as “any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of the water to an extent that is detrimental to its use by people or by any animal, fish or plant”) that may	See tracking no. 10(3).	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			be generated by the Project including dust and other aerial emissions that may enter water. The Agency does not agree with deleting this section but would like to see reporting requirements included for any updated air quality monitoring.		
37	IEMA – 9	Sable Haul Road Land Use Permit and Preliminary Haul Road Design	The Sable haul road preliminary design stipulates a number of considerations for road construction, including keeping road height and slope profile low, minimizing berms, using the proper grade of crush to facilitate movement, and providing caribou crossing areas at key crossing sites (as determined by survey). The document states that BHPB will consult with the communities to verify placement of the caribou crossings. The Agency supports these initiatives in constructing a more “caribou friendly” road. In addition, the Agency believes that BHPB should attempt to construct most of the road with gentle side slopes, not just at designated caribou crossing (since one can never always predict where caribou will cross). Low profile and ease of access would be critical to reducing the barrier or filter effect of any road. This would also facilitate a better closure option that would reduce the barrier effect of roads after mine closure. Reducing the height of snow berms in winter is another critical factor, as shown in the wildlife effects monitoring undertaken by BHPB. The Agency looks forward to additional opportunities to work with BHPB, the WLWB and the communities in better designing the Sable Haul Road before its construction.	BHP Billiton remains committed to providing safe crossings for caribou both during mine operations and for mine reclamation. As stated in the Renewal Application (re. the Sable Land Use Permit), BHP Billiton will conduct a field visit with community representatives to make final determinations of the locations for caribou crossings. BHP Billiton will also continue to use the experience gained from operation of the Misery road to guide the final design of the Sable road, including effective location and construction of caribou crossings.	
Medium Priority/Concern					
38	IEMA – 10	Part B –	BHPB's proposed definition would exclude pits or	It is BHP Billiton's intent to clarify	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

		“Dewatering”	pumping from other man-made features on site. We would prefer that the original definition be retained.	that the defined term “Dewatering” applies to the removal of all water from a natural lake where dewatering activities are of ecological interest and not to apply to constructed sumps and other water management facilities that are internal to the site.	
39	IEMA – 11	Part B – “Receiving Environment”	BHPB’s proposed definition removes any reference to any consequential effects from the discharge of Project waste on the terrestrial environment. While we understand the reasons for this, we believe this requires further discussion and consideration.	BHP Billiton feels that this is an important definition that should be the same in both Water Licences. A discussion of the exact wording was undertaken and approved for renewal of the Main Water Licence in 2004/05 and BHP Billiton’s position and recommendation is the same at this time.	
40	IEMA – 12	Part C – s. 1(a)	The proposed wording change by BHPB does not acknowledge that the Beartooth pit is already in operation and that security for that pit should be posted within 30 days of issuance of the renewal licence. As BHPB has already posted security for the current Sable, Pigeon and Beartooth licence, it may be possible to reduce this under the new licence to cover Beartooth only.	The wording proposed for Part C, Item 1(a) would require posting of the required security for Beartooth Pit (\$4.8M) upon issuance of the Renewal Licence and this is BHP Billiton’s intent.	
41	IEMA – 13	Part E – s. 8&10	The Agency would prefer to see that the word “dewatering” not be removed but replaced with “Dewatering and Draw Down”. This will ensure that even during dewatering of the future pits, there will be some protection of the downstream aquatic environment. In section 10, although a Plan may be approved once, there should be provision for notice to be provided to the Inspector of any planned	BHP Billiton feels that this comment highlights the potential variable uses of the terms Dewatering and Draw Down and highlights the need for these definitions to be clarified, as is proposed in the Renewal Application. There are two lakes to be Dewatered under this Water	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			discharges from the Two Rock Sedimentation Plan.	Licence, Pigeon Pond and Sable Lake. IEMA's reference to "dewatering of future pits" is assumed to refer to these two events. Dewatering Plans will be required for each of these two events under Part E, Item 2. However, planned discharges from Two-Rock Sedimentation Pond during mine operations are not "Dewatering" events and do not require dewatering plans. This is analogous to the release of water from the Long Lake Containment Facility at location 1616-30. BHP Billiton agrees that prior notification should be provided to the Inspector and has proposed this in Part G, Item 12 with wording that is the same as the Main Licence to ease implementation and enforcement.	
42	IEMA – 14	Reduced Submission Timelines	For documents requiring Board approval (for example, see Part F, s. 2, 12; Part G, s. 1, 2(a), 3(a); Part J, s. 1). Reducing approval times from 90 or 60 days to 30 days may not allow for input from interested parties or proper Board meeting scheduling. This may also lead to delays in construction or other activities to be carried out on site.	See tracking no. 6.	
43	IEMA – 15	Part F – s. 2(b)	While we understand BHPB's explanation of why an adaptive management approach may not apply for a short construction period, perhaps adaptive management should be adopted for the operation of the Pigeon and Beartooth diversions rather than	BHP Billiton adopts an adaptive management approach for all of its projects including Beartooth and Pigeon.	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			monitoring for effects after the fact (add adaptive management requirement to Part F, s. 2(a)). Thresholds may cover water quality variables that are not listed in the Effluent Quality Criteria. The Agency supports the adoption of an adaptive management approach for the construction and operation of this facility.		
44	IEMA – 16	Part F – s. 12	The Agency is of the view that the portion of this section relating to design requirements to support fish passage and habitat for the Pigeon Stream Diversion, both during and after Pigeon pit mining operations, is a sound measure regardless of whether it may be included in a Fisheries Authorization. This is similar to the ongoing issue related to the applicability of the ICRP to pit lakes and fisheries matters.	Duplicative and overlapping regulatory requirements are fundamentally unfair to the licensee. Issues that are clearly within the jurisdiction of and regulated by another regulatory agency, such as fish and fish habitat, should not be duplicated within the Water Licence.	
45	IEMA – 17	Part G – s. 11(b)	The Agency would suggest adding the words “in the event of an emergency” at the end of this section to clarify when the Inspector would exercise the authority.	BHP Billiton disagrees with this suggestion. This level of operational detail is appropriate to the authority of the Inspector.	
46	IEMA – 18	Part G – s. 11(c)	The Agency would like additional information to support the deletion of the part of this section that deals with no under ice discharges from Two Rock Sedimentation Pond.	BHP Billiton's experience with managing effluent releases from the LLCF shows that there have been occasions where fall, winter or spring releases are helpful or necessary to maintain the desired water levels and safety freeboards behind the water retention dams and dykes. This has been managed for 10 years within the licenced flow rates without any observed effects in the receiving environment. It is reasonable to expect that similar	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				occasions will arise at Two Rock Pond where fall, winter or spring effluent releases may be helpful or necessary. BHP Billiton is regulated under the water licences and has demonstrated its commitment to always manage effluent releases in a manner that prevents erosion in the receiving environment. BHP Billiton is unaware of any ecological reasons to prohibit under-ice (i.e., fall, winter or spring) discharges and, therefore, proposes to remove an operational constraint that presents no apparent regulatory or environmental protection benefit.	
47	IEMA – 19	Part G – s. 11(d)	The Agency does not now support the explicit inclusion of a dilution zone. It may be reasonable to set a point where compliance will be reached but we do not see that as being exactly the same thing.	BHP Billiton has not proposed the explicit inclusion of a dilution zone in the Water Licence. BHP Billiton anticipates that this discussion will continue as part of the current review of the proposed chloride EQC. See also tracking no. 4.	
48	IEMA – 20	Part G – s. 11(e)	The Agency would suggest adding the words “in the event of an emergency” at the end this section to clarify when the Inspector would exercise the authority.	See tracking no. 45.	
49	IEMA – 21	Part G – s. 12	The proposed wording by BHPB may allow the Inspector to authorize discharges from the Two Rock Sedimentation Pond that are above the Effluent Quality Criteria. This should be clarified.	BHP Billiton has proposed that the same pre-discharge procedures that are successfully implemented at the Long Lake Containment Facility be applied to the Two-Rock Sedimentation Pond. This will	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				provide the desired prior notification and will ease operational implementation and enforcement.	
50	IEMA – 22	Part G – s. 14	It is not clear what the implications may be for LLCF water management with increased minewater discharges from both Beartooth and Pigeon pits may be. It may be desirable to have a ceiling on the amount of water that can be discharged from each pit to ensure that groundwater and downstream water quality are protected. This is the sort of concern that would be greatly facilitated by amalgamating the two licences.	Minewater from individual sources is internal to the minewater management systems and is not a matter for regulation under a water licence. BHP Billiton disagrees that this supports argument for amalgamation of water licences.	
51	IEMA – 23	Part K – s. 4(h)	The Agency does not accept the proposed changes or rationale from BHPB. We suggest that this section be reworded as follow “an evaluation of the cumulative effects to which the Ekati mine contributes”. The Agency would like to ensure that BHPB studies its contributions to cumulative effects in both the Koala-Lac de Gras and Exeter Lake drainage systems.	In the absence of an established framework for regional cumulative effects, BHP Billiton feels that the proposed wording could lead to continued misunderstanding of this clause in that the cumulative effects to which EKATI may contribute are not defined. BHP Billiton believes that the wording proposed in the renewal application portrays a clear meaning that can be implemented.	
52	IEMA – 24	Surveillance Network Program – s. C(2)	The Agency could not locate where in the ICRP Reclamation Research Plan (currently under revision) there would be monitoring of Ursula and Exeter Lakes. It may be preferable to state this requirement in the licence rather than the Plan.	The ICRP, and reclamation research plan, are currently undergoing final revision for the Board's Working Group. BHP Billiton will in future provide a specific reference to where this monitoring is described in the ICRP or will withdraw the request for its removal from the Water Licence.	
Low Priority/Concern					

BHP Billiton’s Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

53	IEMA – 25	Closure Clarification	BHPB’s renewal development indicates that the Environmental Agreement expires “End of Mine, subject to 5 yr reviews”. The Environmental Agreement states: “16.1 This Agreement shall terminate upon full and final reclamation of the Project site in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.”	Acknowledged. BHP Billiton recognizes the full extent of the Environmental Agreement and was including this in the phrase “End of Mine”.	
54	IEMA – 26	Part G – s. 8(b)	BHPB suggests weekly inspections of the Two Rock Lake Sedimentation Pond facilities only when the facility is “operating” or as directed by the Inspector. The frequency of inspections should ensure monitoring of storm events. It may be best to better define “operating” to avoid confusion.	The inclusion of the wording “or as directed by the Inspector” will provide for inspection during storm events or other unanticipated events if the Inspector so chooses. This level of operational detail is appropriate to the authority of the Inspector.	
F: Lutsel K’e Dene First Nation (LKDFN) Comments – Received August 6, 2008					
55	LKDFN – 1	Term of Licence	BHP has requested a term of licence ending in the year 2020. The information presented in the BHP Water Licence application does not provide the Authors with the certainty and confidence that there is a full understanding or a significantly developed plan to understand how waters will be used and what impacts to waters through the deposition of waste will take place. Thus, at this time, the Authors are not able to fully evaluate the quantitative and qualitative effects on the waters into which the waste is to be deposited over the BBZP proposed Water Licence term. The understanding of these effects are to be presented through the Water Licence application further to Section 16.2 of the	The initial licencing of the project from 2000 to 2003 included review by the Mackenzie Valley Environmental Impact Review Board. The project description and the issues of effects and mitigations were resolved at that time. At the current time, there have been no proposed changes to the project that affect that initial assessment and the WLWB has accepted the application for exemption from preliminary screening on this basis. See also tracking no. 12.	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			Northwest Territories Waters Act and Section 6.2(f)(iv) of the Northwest Territories Waters Regulations.		
56	LKDFN – 2	Combined Reporting	<p><u>Recommendation:</u> Under Part B, Item 9 of MV2001L2-0008 SHP suggests discharging any obligation it may have under this licence to prepare, Update or modify a report, Management Plan, the Aquatic Effects Monitoring Program, and Annual Report of the Interim Closure and Reclamation Plan through Incorporation under MV2803L2-0013. The Authors recommend clear direction from the WLWB on how this is to be completed by BHP to ensure effective management of information.</p>	BHP Billiton will follow directions provided by the Board in this regard.	
57	LKDFN – 3	Tlicho Legislation	<p>Under Part A~ Item 1(d) of MV2001L2-0008 BHP suggests the addition of Tlicho legislation to the following:</p> <p><i>Compliance with the terms and conditions of this License does not absolve the Licensee from responsibility for compliance with the requirements of all applicable Federal, Territorial, Tlicho and Municipal legislation.</i></p> <p><u>Recommendation:</u> If this addition is being considered there should be an understanding of all the Tlicho legislation referred to through this condition that may specifically be related to the terms and conditions set within a water licence. There should also be consideration on how new Tlicho legislation should be considered during the term of the water licence.</p>	BHP Billiton leaves these considerations to the Board to address but agrees that it would be useful to know from the Tlicho what specific requirements in their laws would apply to mine operations.	

58	LKDFN – 4	“Engineer”	<p>Under Part A, Item 2 of MV2001L2-4)008 the MVLWB provided the following definition: <i>“Geotechnical Engineer” means a Professional Engineer registered with the Association of Professional Engineers, Geologists, and Geophysicists of the Northwest Territories and whose principal field of specialization is- the design and construction of earthworks in a permafrost environment;</i></p> <p><u>Recommendation:</u> The licence renewal should not reference a “Geotechnical Engineer” or a specific engineering specialty but rather an “Engineer”. The Authors recommend the following definition: <i>“Engineer” means a Professional Engineer registered to practice in the Northwest Territories in accordance with the Engineering, Geological and Geophysical Act .R. S. 1V W 2’. 1983, c. E-6;</i></p> <p>The Territorial engineering association allows an Engineer, under specific instances, to sign off on geotechnical items Northwest Territories Association of Professional Engineers Geologists and Geophysicists’ (NAPEGG) Rules of Conduct state that any Engineer/Geologist/Geophysicist <i>“shall undertake only such work as they are competent to perform by virtue of training and expertise, and shall express opinions on engineering, geological and geophysical matters only on the basis of adequate knowledge and honest conviction”.</i></p> <p>A refined definition of “Engineer” links the definition to legislation (set in the recommended definition)</p>	<p>BHP Billiton has considered this approach and has suggested, in the renewal application, select changes to wording in the Water Licence where there could be conflict with the Professional Engineers Act. LKDFN is suggesting an alternate approach. BHP Billiton requests the opportunity to comment on wording changes that the Board may wish to make in this regard. BHP Billiton suggests that the Board consider contacting NAPEGG for their advice on the matter.</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			and also moves to harmonize approaches taken in past Northwest Territories Water Board and Nunavut Water Board Water Licences.		
59	LKDFN – 5	Tundra Soil Study	<p>Under Part I, Item 2 of MV2001L2-0008 BHP was to submit 'term of references, within three (3) months of issuance of the Licence, for a Tundra Soil Study. A review of the WLWB Public Registry yielded no correspondence outlining terms of reference for this study or approval by the WLWB.</p> <p><i>Recommendation:</i> The Authors believe that this term should be refined to define a comprehensive scope for the Tundra Soil Study. This should serve to assist in evaluating waste rock set back distances and the potential filtering function provided by the tundra to improve quality of waste rock drainage. The inclusion of a Tundra Soil Study is reinforced through the Mackenzie Valley Environmental Impact Review Board's (MVEIRB) recommendation to evaluate the effectiveness of tundra soils and organics at filtering suspended solids, heavy metals and nitrogen from runoffwater.</p>	See tracking no. 32(2).	
60	LKDFN – 6	Financial Security Estimate	The security amount of \$14,446,000 set through MV2001L2-0008 needs to be re-evaluated. This is a 2002 amount determined by MVLWB following the Public Hearing and guided by a second financial security estimate presented by BHP. As denoted in the MV2001L2-0008 Reasons for Decision, discussion on the BHP Security Assessment Model was to be postponed to a later date ³ . WLEC believes that this discussion should take place prior to deeming the water licence application complete so Interested Parties can request clarification on model specifics.	BHP Billiton anticipates that there will be a review of the reclamation security for the entire mine operation after completion and approval of the Interim Closure and Reclamation Plan. This sequence of events ensures that the review of security will be based on an updated and approved work plan. If that review results in a change to the security required under the SPB	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>As stated in the MV2001L2-0008 Reasons for Decision, BHP presented a second security amount, separate from that proposed through the 2002 Public Hearing, which ignored progressive reclamation credits originally proposed by BHP. The Authors have not reviewed materials on how this output value (\$14,446,000) was generated but it is inferred that main scoping elements of the model4 did not change when calculating the second BHP estimate. If this is the case then the financial security estimate set in MV2001L2-0008 was based on input and costing assumptions used in the 2001 EKAT.[Reclamation Liability Estimate, the EKATI Interim Abandonment and Reclamation Plan (BHP, 2000),and BHP Mine Plans, Management Plans and Reports developed prior to the issuance of MV2001L2-000g. As also stated by BEE', these assumptions were founded on BHPs operational experience and northern contractor rates prior to the issuance of MV2001L2-0008. Further, presumably the 2002 financial security estimate used 2001 commodity and labour prices.</p> <p><i>Recommendation:</i> BHP and IJAND should develop revised stand alone BPS financial security estimates using future dollars set at the date of licence expiry to account for inflation. For example with a three year licence, BHP and DIAND should develop estimates using 2011 dollars. A revised estimate should also consider current commodity (fuel, steel) and labour prices (possibly at Intervention filing) to accurately reflect current year costing.</p>	<p>Water Licence, then BHP Billiton anticipates that, at that time, the Licence would be updated by the Board and the revised amount of security would be posted by BHP Billiton. No revision to the security required under the SPB Water Licence is proposed at this time. As stated in the Renewal Application, BHP Billiton has proposed to divide the total security into three equal parts, which overestimates the security required for the Beartooth developments and thereby provides the Board with a greater than necessary security pending future development.</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

61	LKDFN – 7	Financial Security as a Function of Time	<p>BHP, through its DRAFT Water Licence, has proposed a staggered security bonding requirement which divides the 2002 generated \$14,446,000 estimate value into three equal parts (\$4,815,333.33). Each equal part is attached to the development of each pit. Currently Beartooth is online with Pigeon and Sable scheduled for future development and construction. BHP proposes to post \$4~815,333.33 at licence issuance and provide a second security instalment of equal value thirty (30) days prior to Pigeon construction and a third security instalment of equal value thirty (30) days prior to Sable construction.</p> <p>BHP argues <i>that Sable Pigeon and Beartooth Pits are clearly separate and distinct construction areas that an' to be developed on different timeframes and BHP Billiton is committed to posting a fair determination of reclamation security at the onset of construction.</i></p> <p><i>Recommendation:</i> If the WLWB is considering the piecemeal posting of financial security for the undertaking, then three separate and distinct water licences should be developed to account for the different time frames. This will ensure that the most accurate determination of reclamation security is set at the onset of construction that account for: any uncertainties related to dynamic mine and management plans, inflation, the changing markets of commodities and labour. Such an approach may provide the WLWB with. The most up to date information at pit construction onset so they may evaluate past performance (and Interested Parties</p>	<p>BHP Billiton finds the LKDFN's use of the phrase "piecemeal" to be inappropriate as regards the proposed approach to security. BHP Billiton has proposed an approach that follows the federal government's policy for requiring security to be provided commensurate with the liability present. This is a matter of fundamental fairness to the licensee. BHP Billiton finds the argument in favour of 3 separate licences to be impractical and does not provide any regulatory benefit.</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			may provide evidence) under Section 14.4.d of the Northwest Territories Waters Act closer to construction development.		
62	LKDFN – 8	Application for a Reduction/Change in Financial Security	Recommendation: BHP states as progressive reclamation work is completed by the company there needs to be mechanisms in place for government to reduce security accordingly. As per Part C, Item 1(b) and Part C, Item 3 of MV2001L2-0008 the WLWB may make adjustments to the financial security posted by BHP. WLEC kindly requests that if there are any proposed changes to financial security, before the expiry of a newly developed licence, that the process be public with a Public Hearing mechanism for Interested Parties to provide formal comments.	BHP Billiton disagrees with the suggestion that a Public Hearing process is necessarily required for a change to reclamation security due to progressive reclamation. The change would be based on workplans, schedules and costing that had already been approved by the Board and, as such, would not require the additional time, cost and resources for all parties to expend on further review and Public Hearings.	
63	LKDFN – 9	Use of Pit Lakes for Processed Kimberlite Deposition	BEEP proposes refinements to Part G, Item 1 of MV2001L2-0008 which includes the provision to deposit minewater and/or processed kimberlite in the Beartooth, Pigeon and Sable Pits. The Authors understand that the use of Beartooth Pit was considered under MVBRIB's Report on Environmental Assessment. MVLW8 has also approved the BHP terms of reference provided for Pit Lakes studies set under Part 1, Item 1. Recommendation: A separate condition, outside of Part G, Item 1, should be developed in the Water Licence renewal which provides the Board an opportunity to approve an Engineer's evaluation of spatial containment, sources and types of waste deposited, schedule of deposition and associated volumes, operational details, description of any proposed physical or chemical treatment prior to pit	BHP Billiton's proposed wording recognizes the potential to deposit minewater and/or processed kimberlite into Beartooth Pit according to the project as it was assessed. This does not include the Pigeon or Sable pits. BHP Billiton's proposed wording is intended to clarify and provide assurance that BHP Billiton will provide a report to the Board prior to any use of Beartooth Pit for waste deposition. This information would be provided as an update to the Wastewater and Processed Kimberlite Management Plan. The information provided would conform to the requirements of Part G, Item 1(a)(i through xi).	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			lake disposal and to the receiving environment, and discussion on monitoring. BHP is encouraged to incorporate findings and discussion from the Pit Lake studies completed under Part 1, Item I of MV2001L2-0008.		
64	LKDFN – 10	Fuel Tank Farms, Working Pads & Associated Sumps	Recommendation: Conditions should be instituted through the Water Licence renewal which incorporate the Canadian Council of Ministers of the Environment (CCME) - Environmental Code of Practice for Above Ground and Underground Storage Tank Systems Containing Petroleum and Allied Petroleum Products (2003) for fuel storage facilities at the EKATI site. Provisions and limits should also be set for materials used for construction (i.e. granular fill) to ensure that these materials do not impact waters through acid generation or metal leaching. Sumps used on site, where discharge to the receiving environment takes place, should also be appropriately monitored with Water Licence limits.	BHP Billiton finds this recommendation to be unclear and asks that the LKDFN be asked to clarify with specific items that can be responded to. BHP Billiton disagrees generally that sumps should be monitored to water licence limits. Further, engineered structures will be captured under the Construction requirements of the Water Licence such that the Board can monitor soil specifications provided by professional engineers. BHP Billiton disagrees generally that engineering specifications be stipulated by the Water Board in a Water Licence; these should be developed on a project-specific basis by professional engineers.	
65	LKDFN – 11	Spill Contingency Planning	BHP proposes a change of submission dates in Part J, Item 1 of the Water Licence where an Update to the approved EKATI Spill and General Contingency Plan would be submitted thirty (30) days prior to the construction of the Pigeon and Sable pits. Regulators and Interested Parties, such as the capacity stretched LKDFN, require sufficient time to review and formulate comments for Board consideration and approval. Ninety (90) days prior is more appropriate	<ol style="list-style-type: none"> 1. BHP Billiton's rationale for this proposed change remains clear; the EKATI Spill and General Contingency Plan has been approved and successfully implemented for 10 years; future updates of this existing Plan to incorporate the Pigeon and 	

			<p>for Interested Parties such as WLEC.</p> <p><i>Recommendation:</i> The Authors recommend the use of a concordance table, similar to Table 1 as a cover to a BHP Spill Contingency Plan. This table can act as an effective and dynamic tool, aiding BHP in their development of a Plan, to ensure adequate information is presented. This table also guides a regulatory Reader to specific document sections to ensure the Plan covers the main elements of spill contingency planning. As specified on Page 2 of the NWTWB Guidelines for Contingency Planning, the following items should be addressed in a Spill Contingency Plan:</p> <ul style="list-style-type: none"> i. identification of all potential sources of spills; ii. estimation of the potential size and type of spills; iii. establishment of where spills could migrate; iv. establishment of a communication network; v. identification of specific preventative measures and procedures; vi. identification of specific safety hazard associated with the spills; vii. establishment of where, and what type of clean up equipment can be readily obtained; viii. identification of what local assistance, or other resources, are available; ix. assignment of specific responsibilities to personnel; and x. assessment of response action plans for various types of potential spills (i.e. "what to do" and how to do it"). 	<p>Sable pits should not require additional time.</p> <p>2. BHP Billiton is committed to providing Plans and Reports in a manner and format that conforms with the requirements of the Water Licence. For the Contingency Plan specifically, the wording in the licence includes reference to the Board's "Guidelines for Contingency Planning".</p>	
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			<i>(PLEASE SEE EXAMPLE TABLE IN COMMENT LETTER)</i>		
66	LKDFN – 12	Waste Rock Pile Design: Geochemistry of Waste Rock and Tailings	<p>Section 3.1.1, 3.2.3 and 3.3.3 of the Development Description provides a general statement regarding rock geology in vicinity of pit and generalized conclusions regarding static and kinetic testing results. Reference to material (Further to Bullet (b)) which provide specific details regarding locations, types, and numbers of rock tested for static and kinetic testing is requested. Without additional information (or an appropriate reference) it is not possible to assess if there has been adequate testing to characterize the waste rock and if waste rock operations/placement practices are sufficient to manage ARD/MT waters. Additionally, it is uncertain, if the estimated geochemical loads applied to the Long Lake Containment Facility for each pit are representative of site conditions.</p> <p>Further to the above, Section 3.2.3 stated that a full characterization of the Pigeon Pit Waste rock distribution will be performed as part of the Feasibility Study". Has this study been completed? Is there a more recent report that contains geochemical results for each pit?</p>	<p>The requested information relates to the basic project design which is described, and which was ultimately approved, in the initial licencing and environmental assessment process. BHP Billiton has not proposed any changes to the project design and this renewal application has been accepted by the Board as being exempt from preliminary screening. BHP Billiton is willing to provide this nature of information or references to it on this basis. The storage capacity in Two-Rock Pond is designed to contain a 1 in 100 year storm event.</p> <p>The statement that further work is to be carried out is a report production error that was inadvertently carried forward from old versions of the report template. BHP Billiton will issue an errata for this statement.</p>	
67	LKDFN – 13	Waste Rock Pile Design: Hydrological Considerations and Seepage Management	<p>Section 3.1.1 of the Development Description states that "positioning of the waste rock storage piles has been carefully considered in order to restrict impact to one, rather than two watersheds". Topographic maps within the Sable, Pigeon, and Beartooth were provided. The watershed boundaries can be inferred from these maps; however, only one</p>	<p>The reference in the DD Report to a single watershed was in reference to the Horseshoe watershed, inclusive of the individual Two-Rock and Ulu Lakes drainage areas. The Two-Rock and Ulu drainage areas are subcomponents of the Horseshoe</p>	

			<p>Figure (Figure 6) was provided for the Sable area that depicted the extent of the waste rock pile overlapped with the watershed boundaries. Figure 6 clearly shows that the waste rockpile is not restricted to one watershed, but rather multiple watersheds. The reference material and/or discussion that provide details to each of the following points (either to a focussed reference further to Bullet (b) or a formulated BHP response) is needed to assess impacts of waste onto waters:</p> <ol style="list-style-type: none"> 1. A figure which delineates the extent of the waste rock pile for Pigeon and Beartooth development areas along with a delineation of watershed boundaries within the development area, should be provided to assist in the understanding of how seepage waters from the waste rock piles would be managed. 2. Due to the configuration of the waste rock piles in relation to the watershed boundaries, there are locations where seepage waters from the waste rock pile drain onto tundra soils that could drain into receiving environment lakes. Thus, these seepage waters are uncontrolled discharges. Methods to manage the release of these waters may include, but are not limited to, 1) set back distances from receiving lakes to the waste rock pile, and 2) construction of waste rock toe berms. <p>-What other methods or techniques are used to control seepage waters that do not drain to a controlled mine sump or wastewater location?</p>	<p>watershed. While the design of the Sable waste rock storage area extends slightly beyond the boundaries of the Horseshoe watershed on the south side (Figure 6 of the DD Report), the design layout has not changed since the initial licencing of the project. Frozen toe berms, as are used in other mining areas such as Fox, are proposed in these areas of the Sable site to impede runoff. Figure 8 of the DD Report illustrates the location of the Pigeon WRSA in relation to the LLCF runoff collection area via Little Reynolds Pond. Waste rock from Beartooth pit is incorporated into the Panda/Koala WRSA as depicted on Figure 10 of the DD Report. All of these WRSA configurations are as initially assessed and licenced.</p>	
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			<p>-Further to Bullet (f) of this review, a tundra soils study was proposed by BHP. The status of this study and the result has not been examined. Is there a relation between the tundra soils study and waste rock seepage Water treatment? If so, is there demonstrated proof that minimum 100 in set back from receiving water bodies is appropriate?</p> <p>-A detailed engineered design of the waste rock piles for the Pigeon and Sable waste rock piles was not reviewed. Are these designs complete? Has there been measured performance assessments, perhaps through a research study, of toe berm designs at EKATI that demonstrate how seepage waters are controlled from waste rock piles?</p> <p>3. Without a detailed understanding of the site hydrology, specifically relative surface water flux (direction and magnitude) on the site surface, before, during, and post construction of the waste rock piles and associated mining infrastructure within the Pigeon and Sable pits, it is difficult to assess if the SNP locations are appropriate. The following additional details are requested: surface water flux should be presented on a topographic map, with mine infrastructure overlaid, current SNP locations labelled, and flux vectors depicted.</p>		
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68	LKDFN – 14	Wastewater and Processed Kimberlite: Processed Kimberlite Containment	<p>Section 3.0 of the Development Description states that “ all kimberlite will be processed at theEKATi plant and processed kimberlite will be disposed within the existing containment areas.However, current plans also include the potential redirection of processed kimberlite to Beartooth Pit once it has been exhausted as part of the creation of a Pit Lake”.</p> <p>i. It is understood that the existing containment areas for disposal of processed kimberlite is the Long Lake Containment Facility (LLCF). Is there another existing containment area confirmed such as Beartooth pit?</p> <p>ii. The EKATI Main Site Interim Closure and Reclamation Plan (ICRP) is currently in the process of being updated. Further to Bullet (j) of this Review, various research activities have been completed and are proposed to be completed with regards to Pit Lakes. It is not understood if there is a relationship between the ICRP research activities and the potential redirection of processed kimberlite to Beaxtooth Pit. Additional details are requested to clarify intention and positioning on the subject.</p> <p>iii. Details of the decision making process, including any triggers and thresholds, that detail the plans and timing when redirection of processed kimberlite to Beartooth Pit should be detailed.</p>	See tracking no. 63.	
69	LKDFN – 15	Two Rock Sedimentation Pond	The Authors believe that the main design intents of the Two-Rock Sedimentation Pond are to store waters from the dewatered Sable Lake, discharge pit groundwater, collection basin for run off waters from	See tracking no. 66.	

BHP Billiton’s Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>the waste rock pile, and location for water treatment prior to discharge. A semi-pervious filter dyke will be used to aid in removal of suspended solids in the Pond waters. Once Pond waters reach acceptable quality at the discharge location, water will be removed from the Pond. A detailed understanding of the Two-Rock Sedimentation Pond water quality during operation and post-closure has not been presented through the filed application. Further, there is not a detailed understanding of how water quality predictions and discharge operations were considered in the determination of the required storage volume presented. Additional detail on the items listed under this bullet would be appreciated.</p>		
70	LKDFN – 16	Contingency Planning	<p>The Watershed Adaptive Management Plan. (Feb 2008) does not address and consider the watersheds within the Pigeon and Sable pits. Updates to this plant which include details regarding water discharge from Two-Rock Sedimentation Pond, are necessary. The Watershed Adaptive Management references the Long Lake Containment Facility Water Quality model to establish when a “trigger” occurs. These “triggers” are not viewed as transferable to the Two-Rock Sedimentation Pond water quality. Thus, if adaptive management is relied upon for Two Rock Sedimentation Pond, specific “triggers” may need to be developed. It is unknown if adaptive management will be used in the operation of Two-Rock Sedimentation Pond. This should be further clarified by BHP. The Watershed Adaptive Management Plan includes definitions of “trigger” and “threshold” to signify when initiation of a management plan occurs. These definitions should be formalized and included</p>	<p>Adaptive Management will be carried out at the Sable, Pigeon and Beartooth areas as part of BHP Billiton’s general approach to environmental management. The Watershed Adaptive Management Plan will apply to the Horseshoe watershed (per S.3.2.1 of the WAMP). The WAMP does not rely on the LLCF Water Quality Model but does recognize that the model may play a role in future for the Koala watershed.</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			in the refined Water Licence.		
71	LKDFN – 17	Initial Dilution Zone	The Authors have not reviewed materials involving the IDZ apart from the reference listed under Part G, Item. 11(d) of the BHP DRAFT Water Licence ⁷ , on Page 62 of the DRAFT Water Licence, and Tracking Number 21 from the Summary of Comments and Questions from the Regulators Meeting (Community Engagement Report). The Authors understand that discussions on the IDZ continue to take place as it relates to the proposed chloride criterion (Part I, Item 3 of MV2001L2-0008). The Authors also understand that the IDZ that is currently being considered for chloride would be also considered for ammonia. As this is a Water Licence renewal, the Authors do not believe that a review of the IDZ is separate from this Renewal Application and discussion on limitations and applicability from Interested Parties should be welcome through the Water Licence renewal.	Work on a proposed chloride EQC has been underway for some time and has involved original research conducted by BHP Billiton, technical peer review by reviewers and (interim) decision-making by the Board. BHP Billiton feels that this work should continue independently of the Application for Renewal because it is a highly technical area that is already under development and does not relate directly to the issue of renewal of the licence. BHP Billiton plans to submit the results of additional original research on chloride to the Board by the end of 2008 to continue the development of technical information on the topic. This information will require expert technical peer review and consideration by the Board. This highly technical work should not be constrained by an independent, process-oriented timeframe for licence renewal. See also tracking nos. 4 and 8(1).	
72	LKDFN – 18	Solid Waste Disposal Facility, Sewage Treatment Facility,	The Authors understand that the waste disposal facilities listed in the bullet title may be licensed under other Water Licences, If there are waste disposal facilities not covered under a Water Licence and waste generated through the BPS undertaking is	All of the facilities mentioned in the comment are regulated under EKATI's Main Water Licence, MV2003L2-0013.	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

		Hydrocarbon Impacted Soil Treatment Facility (Landfarm)	being deposited within these waste disposal facilities, BHP should file information so Interested Parties can evaluate the qualitative and quantitative effects of waste disposal onto waters. This may include, but not be limited to, engineering design reports, engineering design drawings and specifications, operations and maintenance materials and associated monitoring to evaluate performance. It would be helpful if BHP could detail where sewage, sewage solids and solid waste will be disposed of and where the engineering detail may be found, if it is not licensed under another Water Licence. It would also be useful to understand where hydrocarbon impacted soils are contained and what treatment is proposed if is not licensed under another Water Licence.		
73	LKDFN – 19	Removal of Till and Sediments Prior to Pit Development	BHP has indicated that lake sediments from Beartooth were stored within the Lake Bottom Sediments Storage Pile Area (LBSSPA). BHP also plans to remove till and lake bottom sediments by excavation. The Authors kindly request additional information on the LBSSPA for Beartooth and BEP's plans to manage the till and sediment materials excavated for Sable.	At the Beartooth Pit, a recoverable amount of topsoil was encountered and is stored in the Panda/Koala WRSA for possible future use. At the Pigeon and Sable sites, topsoil will be stored in those WRSA's for possible future use if recoverable quantities are encountered. Till and lake bottom sediment from the Pigeon and Sable sites will be stored within those WRSA's for possible future use.	
74	LKDFN – 20	Additional Detail on Measures for Removal of Nitrogen-Based Compounds and	As a contingency measure where TRSP effluent does not meet Water Licence discharge criteria for nitrogen-based compounds, BHP will employ measures such as aeration, atomization and oxidation for ammonia or biological reduction,	These measures have been identified as possible future contingency plans. It is not anticipated that any of these measures will be required. In the event that such measures may be	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

		Suspended Sediments	phosphorus enhancement and land application for nitrate. The Authors kindly request additional engineering detail on these measures and how they will be employed. BHP has also stated that flocculants and/or coagulants may be used as a contingency to settle suspended solids in the TRSP. The Authors again kindly request additional engineering detail on these measures and how they will be employed.	required in the future, it is not known which measure(s) will be most appropriate to the situation at hand. Following from the principles of adaptive management, the selection of the most appropriate responses is made according to the circumstances encountered. These measures are identified at this time to provide confidence that there are a number of established technologies in the adaptive management “toolbox” to respond to unforeseen events.	
75	LKDFN – 21	Part E – Conditions Applying to Dewatering – Suggested WL Revisions		The following responses are provided to the specific editing recommendations provided by LKDFN for Part E of the licence. LKDFN has not, except in a few specific circumstances, provided any rationale for their suggested changes to the licence; BHP Billiton requests that the LKDFN be asked to provide a rationale specific to each suggested change and that no changes be considered by the Board unless they are accompanied by a supporting rationale. Nonetheless, BHP Billiton has provided a brief response to each of the editing changes proposed by LKDFN as a matter of assisting Board staff with management of the record. BHP	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>Billiton's responses should be considered preliminary pending receipt and adequate time for consideration of rationales.</p> <p><u>Item 2</u>: add "prepared by an engineer"; BHP Billiton disagrees; not all of the information requested is appropriate to require provision by an engineer.</p> <p><u>Item 2(a)</u>: add "along with supporting calculations"; BHP Billiton does not object to this wording if the Boards finds it to be helpful.</p> <p><u>Item 2(b)</u>: add "through engineered discussion and scientific support"; BHP Billiton finds this wording confusing and unnecessary; reference to engineered discussion is not understood and it is not appropriate to require engineering validation in this context.</p> <p><u>Item 2(c)</u>: add "and engineered reasoning on how the schedule and daily discharge rates were determined"; BHP Billiton finds this wording confusing and unhelpful; reference to engineered reasoning is not understood and it is not appropriate to require engineering validation in this context.</p> <p><u>Item 2(d)</u>: replace "locations" with "spatial and temporal dimensioning"; BHP Billiton finds</p>	
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				<p>this wording confusing and unhelpful, particularly the phrase “temporal dimensioning”.</p> <p><u>Item 2(e)</u>: add “as-built”; this is contradictory to the intent of clause 2 which is a report required to be provided <u>prior</u> to dewatering.</p> <p><u>Item 2(f)</u>: add “and qualitative/ quantitative triggers for mitigative/remedial action”; BHP Billiton disagrees that formal adaptive management-style triggers are appropriate for one-time activities such as dewatering; this issue is adequately regulated through the existing wording in clause E(7).</p> <p><u>Item 2(g)</u>: add: “including Global Positioning System coordinates and depth of sample (within the water column)”; BHP Billiton does not object to this wording if the Boards finds it to be helpful.</p> <p><u>Item 2(h)</u>: re. LKDFN comment: BHP Billiton does not object to the concept of referencing standards for flow monitoring but believes that this would be more appropriately included into an SNP rather than the body of a licence; this is because standards and flow measurement technologies may evolve with time and an SNP can be more easily</p>	
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				<p>updated to correspond to these advances; in this event BHP Billiton requests that the Board acknowledge that a range of flow measurement techniques are required at a mining operation to successfully accommodate variable stream types and flow quantities; BHP Billiton recommends that any such clause in an SNP reflect this necessary range in allowable techniques.</p> <p><u>Item 2(i)</u>: (not highlighted) add “engineered”; this wording is not appropriate; not all work contemplated in this clause is appropriate for a requirement for professional engineering.</p> <p><u>Item 2(i)</u>: add “to demonstrate the containment and management of Waters and Waste”; BHP Billiton does not object to this wording if the Boards finds it to be helpful.</p> <p><u>Item 2(j)</u>: add “including engineering reasoning for selection”; BHP Billiton finds this wording confusing and unnecessary; reference to engineering reasoning is not understood and it is not appropriate to require engineering validation in this context.</p> <p><u>Item 2(k) - new</u>: “engineering discussion on how all discharge</p>	
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				<p>outflow structures are located so as to minimize erosion as per Part E, Item 6”; BHP Billiton finds this suggested clause to be redundant to Items 2(d though f) and 6; this clause would introduce unnecessary redundancy and confusion in a regulatory document.</p> <p><u>Item 2(l) – currently (k):</u> add “and the identification of associated triggers used to engage treatment”; BHP Billiton disagrees that formal adaptive management-style triggers are appropriate for one-time activities such as dewatering.</p> <p><u>Item 2(m) – new:</u> “a clear disclaimer outlining any limitation of judgement made by the Engineer to satisfy each bullet under Part E, Item 2”; BHP Billiton disagrees that this wording is appropriate for a water licence; standard engineering practice provides this information where it is appropriate, in an engineer’s signed and stamped report.</p> <p><u>Item 4:</u> add “to the Board and” and also add “Inspector” (as re. approval): BHP Billiton does not object to this wording but finds it unnecessary and confusing in that the Board is referenced in the clause but does not have a review or approval role; the information in</p>	
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				<p>question can be provided to the Board as well as to the Inspector, which is BHP Billiton’s established practice; BHP Billiton agrees that this type of authorization should remain with the Inspector.</p> <p><u>Item 5:</u> add “and Wastes”; BHP Billiton disagrees with this suggestion; the wording introduces confusion into a regulatory document; the <u>effluent</u> quality criteria referred to in this clause apply to water.</p> <p><u>Item 7:</u> add “and annexed to the Dewatering or Draw Down summary report as per Part E, Item 9”; BHP disagrees with this suggestion; the records of inspections are required to be made available to the Inspector, which is an appropriate level of review of these detailed operational documents.</p> <p><u>Item 7:</u> add “The Licensee shall report any mitigative action to correct any erosion problem to satisfy an Inspector in the Dewatering or Draw Down summary report filed as per Part E, Item 9”; BHP Billiton does not object to this suggestion but finds the wording redundant to Item 9(b); if the Board considers the suggested additional wording, BHP Billiton suggests that</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>such wording would more appropriately be included directly into Item E(9)(b).</p> <p><u>Item 9</u>: add “by an Engineer”; this nature of work is not necessarily appropriate to an engineering validation and it would be inappropriate to insert the suggested wording into this clause of a water licence.</p> <p><u>Item 9(b)</u>: add “engineered”; BHP Billiton finds this wording confusing and unnecessary; reference to engineered description is not understood and it is not appropriate to require engineering validation in this context.</p> <p><u>Item 9(b)</u>: add “and photographic record”; BHP Billiton does not object to this wording if the Boards finds it to be helpful.</p> <p><u>Item 9(c)</u>: add “including any monitoring limitation identified by an Engineer”; BHP Billiton disagrees with this suggestion; this nature of work is not necessarily an appropriate requirement for a professional engineer.</p> <p><u>Item 9(e) – new</u>: “information as required through Part E, Item 7”; see response to comments under this tracking no. for Item 7 above.</p> <p><u>Item 10</u>: add “prepared and qualified</p>	
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				<p>by an Engineer”; BHP Billiton disagrees with this suggestion; this nature of work is not necessarily an appropriate requirement for a professional engineer; also note BHP Billiton’s proposed revisions to Item 10 in the renewal application.</p> <p><u>Item 10(a)</u>: add “including applicable decision making triggers set to operate, manage and maintain the facility”; BHP Billiton disagrees with this suggestion, the rationale for which is not clear; further response will be given to a rationale provided by the LKDFN.</p> <p><u>Item 10(b)</u>: add “engineering”; BHP Billiton disagrees with this suggestion; this nature of work is not necessarily an appropriate requirement for a professional engineer.</p> <p><u>Item 10(c) - new</u>: “a clear disclaimer outlining any limitation of judgement made by the Engineer to satisfy each bullet under Part E, Item 10”; BHP Billiton disagrees that this wording is appropriate for a water licence; standard engineering practice provides this information where it is appropriate, in an engineer’s signed and stamped report.</p> <p><u>Items 11 and 12</u>: replace “This plan” with “The plan identified under Part</p>	
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				<p>E, Item 10”; BHP Billiton does not object to this wording if the Board finds it to be helpful.</p> <p><u>Item 12</u>: change “as an update to the existing” to “as an annex to a revised”; BHP Billiton disagrees with this suggestion because it works against attempts to make the management plans as efficient as possible by taking advantage of common elements through integrating new mining areas as they come on stream; LKDFN’s suggested wording change to “annex” will result in the need for repetitive information and “bulking” of the management plan whereas the wording “update” will provide for an integration of new mining areas into the management procedures; the common use of the Long Lake Containment Facility for all mining areas is a good example of the benefits of the approach proposed by BHP Billiton; see also BHP Billiton’s proposed inclusion into the Water Licence of Clause B(9) as a means of streamlining management plans where this is of benefit.</p>	
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76	LKDFN – 22	<p>Part F – Conditions Applying to Construction – Suggested WL Revisions</p>		<p>The following responses are provided to the specific editing recommendations provided by LKDFN for Part F of the licence. LKDFN has not, except in a few specific circumstances, provided any rationale for their suggested changes to the licence; BHP Billiton requests that the LKDFN be asked to provide a rationale specific to each suggested change and that no changes be considered by the Board unless they are accompanied by a supporting rationale. Nonetheless, BHP Billiton has provided a brief response to each of the editing changes proposed by LKDFN as a matter of assisting Board staff with management of the record. BHP Billiton's responses should be considered preliminary pending receipt and adequate time for consideration of rationales.</p> <p><u>Item 1</u>: change "commencement of operations" to "construction of the Pigeon and Sable Pits"; BHP Billiton disagrees with the suggested wording as it introduces confusion concerning when "construction" is deemed to have commenced; the existing wording respects the</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>purpose and nature of the document (Mine Plan) referenced in this clause.</p> <p><u>Item 1</u>: add “all”; BHP Billiton does not object to this wording if the Board finds it to be helpful.</p> <p><u>Item 1</u>: add “The Licensee should also provide an updated Mine Plan as per Part B, Item, 1(1)”; BHP Billiton finds this suggested wording redundant and unnecessary; there is no benefit to the licence by including secondary reminders of each required item from a preceding clause.</p> <p><u>Item 2</u>: change “sixty (60)” to “ninety (90)”; BHP Billiton disagrees with the suggested extension of timeframe for Board review of stamped engineering drawings and documents; BHP Billiton has suggested, with rationale, in the Renewal Application to change this timeframe to thirty (30) days.</p> <p><u>Item 2</u>: change “Geotechnical Engineer” to “Engineer”; BHP Billiton does not object to this change but notes that this nature of work is appropriate for and would legally require validation specifically by a Geotechnical Engineer such that no real benefit would be gained from the wording change.</p> <p><u>Item 2</u>: add “for-construction”; BHP</p>	
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				<p>Billiton disagrees with this suggested wording; this nature of requirement can compromise a construction schedule with no apparent regulatory benefit. See tracking no 6.</p> <p><u>Item 2</u>: add “containing engineering analysis and design rationale”; BHP Billiton does not object to this concept but finds that the addition of this wording is simply “bulking” of the licence for no regulatory benefit; this information is required by professional engineering design standards.</p> <p><u>Item 2</u>: add “Scheduling”; BHP Billiton does not object to this wording if the Board finds it to be helpful.</p> <p><u>Item 2</u>: add “Quality Assurance and”; BHP Billiton does not object to this wording if the Board finds it to be helpful.</p> <p><u>Item 2(a)</u>: add “and decision making criteria used to employ measures”; BHP Billiton disagrees with this suggestion, the rationale for which is unclear; further response will be given to a rationale provided by the LKDFN.</p> <p><u>Item 3</u>: add “and Board”; BHP Billiton disagrees with this suggestion; this level of operational detail is appropriate to the authority of the</p>	
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				<p>Inspector.</p> <p><u>Items 5 and 6</u> – combine with changes: BHP Billiton does not object to combining these two clauses if the Board finds it to be helpful but sees no regulatory benefit to doing so; BHP Billiton disagrees with some of the wording changes proposed by LKDFN for these clauses and will provide specific comments in this regard if the Board feels that any wording changes are necessary.</p> <p><u>Item 7</u> – remove; BHP Billiton does not object to this removal if the Board finds it to be helpful.</p> <p><u>Item 8</u> – remove: BHP Billiton does not object to this removal if the Board finds it to be helpful; BHP Billiton disagrees that a new definition related to this clause is necessary or helpful to the licence.</p> <p><u>Item 11</u>: BHP Billiton does not object to the concept of combining this clause with clause F(5) but does not see this as necessary to the licence; if the Board feels that such a change would be helpful to the licence then BHP Billiton requests that it be afforded opportunity to comment on the wording proposed for a combined clause.</p> <p><u>Item 12</u>: change “ninety (90) days” to “one-hundred and twenty (120)</p>	
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BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

				<p>days”; BHP Billiton strongly disagrees with the suggested extension of timeframe for this document; BHP Billiton has proposed, with rationale, that this timeframe be changed to thirty (30) days in the renewal application;</p> <p><u>Item 12</u>: add “Board”; BHP Billiton does not object to this wording if the Board finds it to be helpful.</p> <p><u>Item 12</u> – LKDFN comment; the engineering design of the PSD has been developed with requested input of aboriginal groups, including LKDFN, and has been filed with DFO for their review and approval under the Fisheries Act (fish and fish habitat); it is a matter of fundamental fairness to the licensee that duplicative and overlapping regulatory approvals, such as would result from the LKDFN suggestion, not be required.</p>	
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G: North Slave Metis Alliance (NSMA) Comments – Received August 6, 2008					
77	NSMA – 1	Part A – Scope of the Licences	<p>We support, in principle, the concept of licence amalgamation, but have insufficient resources to conduct the thorough review that would be required, of both licenses in order to provide helpful comment. In general, the terms of whichever licence are more protective of the environment, including the social, cultural, and economic environment of the North Slave Metis, are preferred.</p> <p>The definition of the receiving environment should include all parts of the environment that can be affected by the mine, and the definition of waste should include all mine discharges to land, air and water. The water licence is supposed to be regulating an undertaking in order to optimize the benefits from the use of water, not just limiting waste discharges to waters.</p>	<ol style="list-style-type: none"> 1. BHP Billiton requests that NSMA be asked to clarify their understanding and intent as regards the federal agencies proposed licence amalgamation. 2. See tracking no. 39. 	
78	NSMA – 2	Part B – General Conditions	<p>The full reports of environmental monitoring must be provided before the summary is completed. The summary is of little value if it is not a concise statement of a completed report. To provide a summary of a document before it is written means the summary must, at least in part, be speculation. There should be a deadline for submission of reports.</p>	<p>BHP Billiton agrees that the Annual Report under Part B should be a concise summary of the information that is provided in the full reports (i.e., AEMP Report). The summaries cannot be and are not prepared until all of the detailed information has been fully synthesized, analysed and interpreted with conclusions drawn. The Annual Report under Part B has a defined submission date.</p>	
79	NSMA – 3	Licence Term	<p>The new, amalgamated licence should be for a reasonable term which balances the need for regular</p>	<ol style="list-style-type: none"> 1. The NSMA's comments regarding licence term is 	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>review and consultation with the need for financial planning. Five to seven years should be suitable.</p>	<p>predicated on the licences being amalgamated, which BHP Billiton strongly opposes and upon which the Board has not ruled. It is requested that NSMA clarify their position regarding the term of the SPB Licence as renewed.</p> <p>2. The comment regarding term of the licence is not the same as verbal comments made at a SPB Renewal meeting at which NSMA was present. At that meeting, an NSMA elder reported that a long licence term would be acceptable as long as there was opportunity to review and change terms and conditions if substantive events required it. See tracking no. 12 for additional relevant response comments.</p>	
80	NSMA – 4	Part C – Financial Responsibility	<p>The NSMA urges the Board to consider the economic situation for financial and insurance institutions when determining the type of security to require. We believe that the security should be provided, in cash, and held in trust with the interest accruing to the reclamation trust fund. The reclamation trust fund should be of a sufficient amount to ensure that a third party contractor could be hired to fully and</p>	<p>See tracking nos. 15, 25, 30, 40, 60, 61 and 62.</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			completely restore the site without any liability to Canadian or Northwest Territories taxpayers, and leaving no environmental liabilities to the aboriginal peoples. Security should be calculated, and levied, to account for socio-economic and cultural restoration activities as well as biophysical restoration activities		
81	NSMA – 5	Part G – Water and Effluent Quality Standards	<p>We would like to remind the Board, the Minister, and BHP that we need to be consulted with regards to setting the standards for water quality that should be required. The definition of “Consultation” included in the Environmental Agreement is acceptable. We wish to be involved in determining which contaminants are regulated, at what levels, and what activities should occur when specific thresholds are reached. As before, we need resources to participate in the consultation adequately. For example, we have concerns about the lack of discharge criteria for chloride or molybdenum.</p> <p>We are not convinced that there is no longer any need to monitor releases of cadmium, chromium, lead, zinc, or nitrite. Arsenic, copper and nickel discharges should also be examined, and higher levels justified.</p>	See tracking nos. 1, 2, 7, 27 and 31.	
82	NSMA – 6	Part I – Conditions Applying to Studies	The NSMA would appreciate seeing terms and conditions in the water licence that ensured that there was training, employment, and hands-on involvement for our members in each of the studies. There is an IBA agreement, and a Socioeconomic Agreement, and an Environmental Agreement, as well as requirements under the Scientists Act, but none seem to achieve the goal. The only way that Metis traditional knowledge can be incorporated	BHP Billiton provides all of the environmental monitoring information to the WLWB where it becomes part of the public record and is circulated and/or posted to the publicly accessible ftp site. In some cases BHP Billiton circulates information directly to all of the reviewers, regulators and aboriginal	

BHP Billiton’s Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>into scientific studies is to involve individuals who have access to that knowledge, so they can see, feel, hear, smell, touch, and taste what is going on. Reading a text based review of a text based report of some work conducted by a consultant from the south or by BHP’s staff does not come anywhere close to our idea of community involvement or allow for the incorporation of traditional knowledge. The AEMP, WEMP, and reclamation research studies are especially important to us.</p> <p>We are not well informed on the status of the Pit Lake studies, or the LLCF water quality monitoring. We require more resources in order to enable us to get a grip on all this information and to assess the implications. The information which we do receive is not coming to us in a format, or on a schedule, that allows us to make use of the information to keep our community up to date, or to gather their input. We also don’t have the resources to gather the community together and interpret the information to them.</p>	<p>groups. BHP Billiton works hard to make the information accessible and understandable to all parties. For example, in 2008 BHP Billiton offered a new program of on-site involvement in the environmental monitoring programs to all of the aboriginal groups. BHP Billiton also works hard to solicit and incorporate traditional knowledge from all of the aboriginal groups.</p>	
83	NSMA – 7	Part J, K, & B – Conditions Related to Contingency Planning and Other Environmental Management Plans	<p>The NSMA wishes to be informed directly, and promptly, by BHP whenever any kind of emergency involving people or the environment occurs. As well, the NSMA would like to be involved in a meaningful way in designing and evaluating all environmental management plans, including adaptive management plans, environmental monitoring plans, waste management plans, and so on. Conditions requiring, or at least stipulating that sufficient resources be provided to facilitate, community involvement should be added.</p>	<p>The NSMA, along with all other parties and aboriginal groups will continue to be informed on a timely basis of any major events that occur at the EKATI site. BHP Billiton remains committed to providing reports and plans in a manner that conforms with the requirements provided by the Board.</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			<p>There should be a firm delivery deadline for reports required under the various plans, and there should be sufficient guidance provided to the contents to ensure communities and regulators get the information they require in a timely manner. The comments which have been provided over the years should assist the Board in further defining the requirements regarding report contents and format.</p>		
84	NSMA – 8	<p>Part L – Conditions Relating to Abandonment and Reclamation</p>	<p>The NSMA still believes that abandonment and restoration should be the goal of closure, and that any alternative closure objectives be evaluated against that base case. Rather than taking for granted that restoration cannot be achieved, we would like to see a rationale, in each and every instance why it cannot. We wish to see an explicit description of how economic considerations are weighed against aesthetic and ecological ones, and we wish to be involved in the design of the risk assessment, including establishment of grading criteria and ratings.</p> <p>The NSMA has not had the resources necessary to keep up with the volume of information related to this topic, and wishes to inform the Board, the Minister, and the company, that consent of the NSMA to leave residual damage has not been given.</p> <p>We are not satisfied with the information we have received, nor with the involvement we have had in closure planning.</p> <p>It is extremely important that environmental monitoring, and the environmental agreement, remain in effect until full and final reclamation of the project, including post-closure monitoring,</p>	<p>BHP Billiton remains committed to working with all parties and aboriginal groups through the current WLWB ICRP Working Group process. BHP Billiton is committed to meeting regulatory requirements to avoid or mitigate environmental effects after reclamation. See tracking no.53 regarding the duration of the Environmental Agreement.</p>	

BHP Billiton's Submission of the Sable, Pigeon, Beartooth WL and LUP Renewal Application – Submitted April 2nd, 2008

			maintenance and mitigation.		
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