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(BHPB & Diavik)

April 27, 2009

File: MV2003L2-0013

To: BHP Billiton Distribution List

Re: BHP Billiton Draft Amended Water Licence for Comment

Introduction

The Wek'èezhìi Land and Water Board (WLWB) staff is pleased to circulate a draft of the amended Water Licence MV2003L2-0013 (the DRAFT) for your comment. This amended Licence has been developed to incorporate terms and conditions that will allow for the construction and operation of the Sable, Pigeon and Beartooth development, as well as the continued operations of the remainder of the Ekati Mine site.

Background to Licence Development

The Ekati Mine site currently operates under two class A water Licences. Water Licence MV2003L2-0013 (the "MAIN Licence", the renewal of N7L2-1616) covers the majority of the site, including the Panda, Koala, Koala North, Fox and Misery pits, waste rock piles, the processed kimberlite containment facility, the process plant and other site facilities. Water Licence MV2001L2-0008 (the "SPB Licence") allows for the development of the Sable, Pigeon and Beartooth pits as well as associated waste rock piles, and other related facilities.

From the time the company first applied for a water Licence to mine the Sable, Pigeon and Beartooth pits, various reviewers have requested that the Board (the Mackenzie Valley Land and Water Board and subsequently the Wek'èezhìi Land and Water Board) consider amalgamating the two Class A Licences.

On September 25, 2009, the Board advised BHP Billiton and reviewers that the Board had passed a motion to amend Water Licence MV2003L2-0013, as provided for by section 18(1)(a)(ii) of the NWT Waters Act, to incorporate terms and conditions required to allow for the development of the Sable, Beartooth and Pigeon pits and associated mine components.

This ruling was made in response to BHP Billiton's application for a renewal of Licence MV2001L2-0008 submitted to the Board on April 2, 2008 and subsequent requests from reviewers to amalgamate that Licence with Licence MV2003L2-0013, instead of renewing the existing SPB Licence.

The Board determined in its ruling that the amendment process would be restricted to ensure that the substance of the Main Licence would not be changed, and that the scope of the two Licences would be combined within the amended Licence. Terms and conditions of the amended Licence would only be changed where necessary to incorporate terms and conditions relating to the Sable, Pigeon and Beartooth Development.

The Board held a hearing in March 2009 to hear evidence and arguments from reviewers and the company on what changes should be considered for terms and conditions relating to the Sable, Pigeon and Beartooth Development.

Approach to Drafting the New Licence

Board staff have developed a single Licence (the DRAFT) that allows for the continued construction and operation of the Ekati Diamond Mine. The DRAFT has been developed with the intent of not changing the substance or intent of conditions of the MAIN Licence in any way that would impact operations or current Licence obligations.

In many places where parallel conditions existed in the MAIN and SPB Licences, they have been combined. In most instances this was possible without any modification of existing terms and conditions, however in some cases some modification of the Licence conditions has been required. Where there was not consistency between the MAIN Licence and SPB Licence, the wording from the MAIN Licence has generally been adopted. In some cases, the wording of the MAIN Licence has been modified to accommodate amalgamation. Where important language or conditions are required specifically to accommodate unique aspects of the Sable, Pigeon and Beartooth Development, stand alone conditions or sections have been included.

Proposed Changes – Outside of Scope of Board Directive

During the development of the DRAFT, Board staff identified several potential changes to the MAIN Licence that might be beyond the scope of the Board's initial amendment process Directive. The Board is requesting comment from parties on the acceptability of these proposed changes which are listed below with a rationale.

Please note that all Licence references below refer to the DRAFT:

1. Removal of Part D, Item 2(f) and 2(g).
2. Removal of Part D, Item 5.
3. Removal of following text "*...and Thinner Lake (Misery Camp)*" from Part D, Item 6.
4. Removal of following text "*...Little Lake and Thinner Lake,*" from Part E, Item 1.
5. Removal of following text "*...Little Lake and Thinner Lake,*" from Part E, Item 7.

Rationale: The company has confirmed that Little and Thinner Lakes will not be used for water use but had not proposed changing the clause as it would be outside the Board's directive. Board staff propose removing the references for reasons of clarity and accuracy within the Licence.

6. Part I, Item 1 replace "...NWT Water Board's *"Guidelines for Contingency Planning, January 1987,"* with "INAC's *"Guidelines for Spill Contingency Planning, 2007"*".

Rationale: Board staff note that the current Licence (Part I, Item 1) states: "*Any proposed amendments shall be in accordance with the NWT Water Board's "Guidelines for Contingency Planning, January 1987," or subsequent editions, and shall be submitted to the Board for approval.*" The Board has previously adopted the INAC Guidelines as the most recent Spill Contingency Guidelines and suggest specifically referencing those guidelines in the amended Licence.

7. Part J, Item 3(g) replace the text "...from the Sable Pit Development, to the aquatic environment" with "...from the Project, to the aquatic environment".

Rationale: Board staff suggest that for consistency of the AEMP throughout the EKATI site that this clause be modified.

8. Part J, Item 3(i) modify the text "*a description of how Project-related cumulative effects on the aquatic environment in Lac de Gras region will be evaluated, including the effects of contaminant reading*", to read "*an evaluation of the Project-related effects on the Receiving Environment that may contribute to cumulative effects in the region*".

Rationale: To address evidence raised at the public hearing regarding this requirement for the Sable, Pigeon and Beartooth Development. Board staff suggest that for consistency of the AEMP throughout the EKATI site that this clause be modified.

We ask that you provide your comment on the acceptability of these changes with your comments on the DRAFT.

Comments on the DRAFT

At this time the Board is requesting comments on the overall structure of the DRAFT and proposed wording of specific clauses. To assist in your review of the Licence, staff have developed, and you will find attached to this letter, the following tables:

1. "Table of DRAFT BHPB Amalgamated Licence – April 27, 2009" which outlines each clause from the amended DRAFT Licence as well as which existing clause it relates to in each, or both the MAIN and SPB Licences.
2. "Table of Conditions not used from SPB Licence – April 27, 2009" which lists all of the conditions from the SPB Licence that were not amended to the DRAFT.
3. "Table of DRAFT Changes to BHPB Surveillance Network Program - April 27, 2009" which lists all the changes to the SNP that were incorporated into the DRAFT Licence.

The final columns of each of the tables are available for reviewer/company comment on each specific clause of the DRAFT.

The DRAFT has not been reviewed by the Board. Rather, Board staff have made these changes and are requesting your input on the DRAFT. This approach allows staff, reviewers, and the Licensee to collaborate on the DRAFT before the Board makes a final decision on the amended Licence.

The Board has heard all of your evidence and argument on the content of the Licence and in some areas of the Licence, the Board has already provided direction to staff on specific conditions. In areas where Board direction has been provided we have highlighted the DRAFT in blue. While we welcome comment on the structure or wording of such clauses, the Board will not be considering any further comment on the substance of those provisions. The timelines for the submission of various plans required under the Licence have also already been considered by the Board and existing timelines will remain the same.

We do not wish to hear comments that restate evidence previously brought to the hearing through your interventions, nor will the Board consider any new evidence. Please consider this when developing your comments.

The Board is requesting **comments from reviewers** on the DRAFT by **May 18, 2009**. The **company's** deadline for comments, including any responses to reviewer comments, is **May 29, 2009**. The Board will then consider the comments received by the deadline in its preparation of a final Licence for issuance to the Minister.

We remind all of the parties that it is the Board's stated intention that only one draft of the amended Licence will be circulated for comment. Please develop your comments with this in mind. Once all of the comments have been received, staff will compile these and provide them to the Board along with staff's recommendations for the amended Licence.

Thank you for your continued effort.

If you have any questions, please contact Kathleen Racher, Ryan Fequet or Zabey Nevitt at the Yellowknife office of the Wek'èezhìi Land and Water Board.

Sincerely,



Zabey Nevitt
Executive Director, WLWB