



INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

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July 9, 2003

Melody J. McLeod
Chair
Mackenzie Valley Land and Water Board
7th Floor – 4910 50th Avenue
Yellowknife, NT
X1A 2P6

Dear Ms. McLeod:

Re: Agency Concerns Regarding Fox Mining Activities and Approvals

The Independent Environmental Monitoring Agency has noted a number of inconsistencies related to the permitting and initiation of Fox pit mining activities at the Ekati mine. The pre-stripping and the blasting of waste rock are considered by BHPB and others to be mining activities, as indicated in BHPB's original water licence amendment request. During our site visit in early June, we noted that pre-stripping and waste rock removal had begun at Fox pit. This has led to concerns within the Agency about possible consequences to the environment from currently unapproved activities, as well as concerns about the approval and public review process itself.

The issues related to incomplete or delayed authorizations of the Fox mining management plans are as follows:

1. The exact discharge location for Fox mine water has not been approved. The MVLWB has not received an application from BHPB to change its discharge location, as requested by the MVLWB in a letter dated November 6, 2002.
2. Fox waste rock is being deposited without an approved waste rock management plan. *Addendum #1 Waste Rock and Ore Storage Management Plan Support Document N*, dated June 14th, 2002 outlines the plans for Fox pit, but has not yet been approved by the MVLWB.
3. Management plans required by the water licence as a condition of approval are being approved after the activities have been initiated.

1. Discharge of Mine Water from Fox Pit to an unapproved location within the LLCF

In a letter dated November 6, 2002 the MVLWB approved a request from BHPB for an amendment to *Water Licence N7L2-1616* to allow for the discharge of decant water from Fox pit to cell D of the LLCF. We note that, while the authorization provides BHPB the approval to dewater the remainder of Fox Lake to cell D of the LLCF, no subsequent authorization has been granted to allow discharge of mine water to the same location.

The approved *Wastewater and Processed Kimberlite Management Plan*, dated June 2001 states that Fox mine water will be processed through the processing plant and, therefore, discharged into cell C. The November 6th, 2002 authorization specifically requests an application to change the location of the deposit of mine water. While pre-stripping of Fox pit has been underway for a number of months, the application for change of discharge location to cell D for Fox wastewater has apparently not been submitted by BHPB. We are not certain whether mine water is currently being discharged to Long Lake, or whether only lake water is being discharged while mine water is accumulating in a separate pit.

Please note that we believe the change of discharge location within Long Lake is very important. Discharges to cell C and not cell D will aid in the removal of suspended solids, the settling of residual flocculants and coagulants and the oxidation of ammonia components nitrate and nitrite before reaching cell E, thereby reducing impacts to the downstream environment. Due to the fact that the results of on-going investigations of the toxicity of coagulants and flocculents may show the need for additional treatment through filtering or other means, it would be precautionary for the operation to provide as much filtering opportunities as possible by discharging into cell C now.

Prior to approval of a change in discharge location from cell C to cell D, the Agency reiterates our August 12, 2002 recommendation that an analysis be conducted by BHPB of the predicted Long Lake water quality discharge levels and environmental affects on the downstream environment. The analysis should reflect the proposed discharge location of cell D versus the previously analyzed and approved discharge location of cell C.

We plan to submit comments on the proposed *Wastewater and Processed Kimberlite Management Plan* by July 15, 2003.

2. Deposit of Fox Waste Rock at Fox pit without approval of the management plan.

Deposition of waste rock from Fox pit, while ongoing at the mine, is currently unauthorized, pending approval of *Addendum #1 Waste Rock and Ore Storage Management Plan Support Document N* by the MVLWB. The *Addendum* was submitted to the MVLWB in June of 2002, was subsequently reviewed by stakeholders including the Agency, Environment Canada, DIAND, and DFO, and responded to by BHPB in September of 2002. In our review of BHPB's responses we note that our concern about the absence of any kinetic testing for "representative" Fox diabase has not been resolved

by BHPB. As a consequence of the uncertainty about how Fox diabase might weather at the site, we recommend that approval of the *Addendum* include a requirement for the placement of Fox diabase within the footprint of the waste rock storage area that drains into Fox pit.

3. Management plans covered by the water licence are being approved after the activities have been initiated.

Fox pit mining has begun, although the current *Waste Rock Management Plan* does not include Fox waste rock, allowing the activity to occur without the board's approval. This highlights the Agency's preference for having such plans, at a minimum, expeditiously reviewed and approved (or not) prior to activities commencing. One possible solution would be to move away from the practice of issuing conditional licences and have the key environmental management plans submitted concurrently with regulatory applications so that they can be reviewed as an integrated and coordinated package. This clearly would provide a much greater level of certainty about proposed undertakings for the board, regulatory reviewers, and other stakeholders.

The Board should ensure that current *approved* management plans cover all mining activities prior to activities being undertaken by the operator. Otherwise, scheduled mine activities should be delayed until the necessary approvals are in place.

The Board should coordinate its approval process to minimize delays in approvals and to avoid inconsistencies between plans.

The Agency would like to know how the Board will proceed with the authorizations of Fox mining activities. We believe that the effective environmental management of Ekati is dependent on the company and regulators providing a coordinated and timely review of plans and that activities should not proceed without an authorization for water use and waste discharge specific to that activity.

Sincerely,

-ORIGINAL SIGNED BY-

Red Pedersen
Chairperson

cc: BHPB, DIAND inspector, Society members