



INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

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Zabey Nevitt
Executive Director
Wek'eezhii Land and Water Board
#1-4905 48th Street
Yellowknife NT
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Re: Comments on Amalgamation of the Ekati Water Licences

Dear Mr. Nevitt

In response to the e-mail and memo distributed on June 2, 2008 regarding comments on a potential amalgamation of the two water licences (MV2001L2-0008 and MV2003L2-0013) for the Ekati mine, the Agency is pleased to submit the following.

General Rationale for Amalgamation

The greatest benefit of harmonisation would be the use of monitoring, reporting and carrying out special studies that should apply to the entire mine, not just to a portion of the mine. The Agency recognizes that BHPB has proposed several clauses in the proposed water licence renewal for MV2001L2-0008 that may result in a more harmonized approach to monitoring, reporting and some other matters across the two licences. We agree that these are desirable and make sense. However, the Agency believes that it is in the public interest, and even the company's best interest, to move beyond simple harmonization to amalgamation of the licences.

For example, there is an extensive on-going effort by BHPB to develop a proposed chloride discharge criterion for the Sable, Pigeon and Beartooth licence (MV2001L2-0008). While the Agency appreciates these efforts, it makes much more sense that results of this special study should, when approved by the Board, apply equally across the entire mining operation. This would avoid a separate process and study for a chloride discharge criterion for the other parts of the mining operation at Panda, Koala, Fox and Misery with most of the discharges taking place through the Long Lake Containment Facility. Special studies, risk assessments, and related work should apply to the whole mining operation and this can be accomplished more readily through amalgamation than through the changes proposed by the company as part of the MV2001L2-0008 renewal.

The Agency is also of the view that there would be efficiencies with regard to the calculation and management of financial security in amalgamating the licences.

Proposed Change to Achieve Amalgamation

If the Board believes that a complete amalgamation of the two Ekati water licences cannot be accomplished at this point, the Agency suggests that some consideration be given to the insertion of one new clause into the MV2003L2-0013 water licence to give the Board the discretion to make directives that can apply to reporting, monitoring, special studies and any other matter that does not deal with the use, flow or quality of waters, or the term of the licences. (The inclusion of these matters would trigger a requirement for a public hearing on the 13 licence, which is not our intent.)

The Agency bases its suggestion on the Wek'eezhii Land and Water Board (WLWB)'s jurisdiction and authority under the *Northwest Territories Waters Act* to:

18. (1) Subject to subsections (2) and (3), the Board may
- (b) amend, for a specified term or otherwise, any condition of a licence
 - (i) on the application of the licensee,
 - (ii) to deal with a water shortage in any water management area, or
 - (iii) in any other case, where the amendment appears to the Board to be in the **public interest**; [emphasis added]

We believe that adding something along the following lines to licence MV2003L2-0013 might accomplish the objective of allowing special studies, risk assessment and related work completed under licence MV2001L2-0008 to be applied, as appropriate, to facilities permitted under licence MV2003L2-0013:

‘The Board may, at its discretion, make directives to the licensee whereby the results of any special studies, risk assessments and related work undertaken as part of MV2001L2-0008 shall be deemed to apply to similar facilities licenced under the terms and conditions of this licence (MV2003L2-0013).’

Such an approach would serve to allow the application of the results of special studies, risk assessments, and related work to the whole mining operation. It should also help to address the concern expressed by the MVLWB regarding amalgamation during the renewal of the main water licence that “The [Mackenzie Valley Land and Water] Board is of the opinion that it cannot impose a condition binding on another water licence through this licence”.

Should the Board not wish to amend licence MV2003L2-0013 in this manner, the Agency recommends that, at a minimum, the end date of the renewal licence for MV2001L2-0008 be set at August 18, 2013 - the same as the expiry of the main water licence MV2003L2-0013. This would have the effect of bringing the two licences for renewal and amalgamation at that point.

We trust that these suggestions may be helpful in your deliberations.

Sincerely,

-Original Signed By-

Bill Ross
Chairperson

cc. Society Members
Anne Wilson, Environment Canada
Bruce Hanna, Fisheries and Oceans