

Sharon

From: Ryan Fequet [rfequet@wlwb.ca]
Sent: Monday, July 14, 2008 5:24 PM
To: 'Registry'
Subject: BHP Billiton Response to Water Licence Amalgamation Request

Attachments: BHP Billiton_Response to Water Licence Amalgamation_Jul14 08.pdf



BHP
on_Response to Wa
Please post to W2008L2-0001

From: Denholm, Eric J [mailto:Eric.J.Denholm@bhpbilliton.com]
Sent: Monday, July 14, 2008 5:10 PM
To: Ryan Fequet; Kathleen Racher; zabey@wlwb.ca
Subject: BHP Billiton Response to Water Licence Amalgamation Request

Hi Zabey, Kathy, Ryan

Attached is BHP Billiton's response to Water Licence Amalgamation Request.

Eric

Eric Denholm, P.Eng.

Environment Superintendent - Traditional Knowledge and Permitting

EKATI Diamond Mine

BHP Billiton

BHP Billiton Diamonds Inc.

#1102 4920 - 52nd Street

Yellowknife, NT Canada X1A 3T1

Phone: 867-669-6116

Cell: 867-445-1519

Fax: 867-669-9293

Email: eric.j.denholm@bhpbilliton.com <<mailto:eric.j.denholm@bhpbilliton.com>>

Internet: www.bhpbilliton.com <<http://www.bhpbilliton.com/>>

ü Please consider the environment before printing this email.

This message and any attached files may contain information that is confidential and/or subject of legal privilege intended only for use by the intended recipient. If you are not the intended recipient or the person responsible for delivering the message to the intended recipient, be advised that you have received this message in error and that any dissemination, copying or use of this message or attachment is strictly forbidden, as is the disclosure of the information therein. If you have received this message in error please notify the sender immediately and delete the message.

BHP Billiton Diamonds Inc.
Operator of the EKATI Diamond Mine



BHP Billiton Diamonds Inc.
#1102 4920-52nd Street
Yellowknife NT Canada X1A 3T1
Tel 867 669 9292 Fax 867 669 9293
bhpbilliton.com

July 14, 2008

File # 4.6.2.1

Wek'èezhii Land and Water Board (WLWB)
#1-4905 48th Street
Yellowknife, NT
X1A 3S3

Attn: Mr. Zabey Nevitt
Executive Director

Re: Response to Water Licence Amalgamation Request and Submissions

On June 6, 2008 BHP Billiton Diamonds Inc. ("BHP Billiton") wrote in response to Mr. Nevitt's letter of June 2, 2008. In that letter Mr. Nevitt, Executive Director for the Wek'èezhii Land and Water Board, requested further submissions regarding the requests that the Sable Pigeon Beartooth ("SPB") Water Licence (MV2003L2-0008) be amalgamated with the Main Water Licence (MV2003L2-0013). This letter is in further response to Mr. Nevitt's letter as well as in response to the submissions of Independent Environmental Monitoring Agency ("IEMA") dated June 18, 2008 and the consolidated response of Indian and Northern Affairs Canada, Environment Canada, and Fisheries and Oceans Canada (the "Agencies") dated June 30, 2008.

BHP Billiton is of the view that nothing has been submitted to the Board that could support the proposed amalgamation. As we stated earlier, the Board has no authority to amend the scope of a licence; yet the proposed amalgamation would do just that to the scope of each licence. While the Board does have the power to amend conditions, it is our position that the level of "public interest" required to amend the existing licences would have to be significant in order to outweigh the public interest in having licences granted that can be relied on by the recipient.

As you know, the Main Licence was the product of a lengthy renewal process which involved numerous submissions, costly public hearings, and received extensive consideration and input from the same parties that are before the Board on the present renewal application. It was granted in respect of specific pits, having specific geological and hydrological factors that were examined by BHP Billiton and other participants in the hearing process in great detail. Since renewal of the Main Licence, BHP Billiton has designed and implemented operational management plans based on the terms and conditions of the licence as granted and is currently conducting its operations to be compliant with that licence. It would be contrary to the principles of fairness and natural justice for the Board to change the existing terms and conditions of the Main Licence on the basis of the submissions now before it. The submissions of both the Agencies and IEMA seem to recognize this principle when they stress that no change is

proposed to “any of the existing requirements or parameters from either license”; yet any amalgamation would necessarily change the scope of both licences.

The main theme that arises from the submissions made by the IEMA and the Agencies is that amalgamation will eliminate procedural redundancy and make the licences easier to follow and understand.

BHP Billiton believes that these administrative efficiencies are addressed within the application for renewal of the SPB Licence, a fact recognized by IEMA when they state: “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 other matters across the two licences.”

The changes that we proposed include harmonizing certain clauses between the two licences where this improves efficiency and extending the licence to the end of the mine life to avoid repetitive renewals. Additionally, BHP Billiton has proposed wording for the SPB Licence that will allow plans and reports required under SPB Licence to be provided as addenda to or incorporated into the corresponding plans and reports required by the Main Licence. These will eliminate procedural redundancy and will make the reports generated by BHP Billiton easier to follow from a regulators perspective as each report will cover the entire operation at Ekati. Specifically BHP Billiton proposes the following to harmonize the two licences:

- (a) Definitions Section – a number of suggested changes to definitions were made to harmonize the language in both licences.
- (b) Part B, Section 1 – already provides for the integration of several plans
- (c) Part B, Section 9 – provides authority to combine reporting required under each of the licences
- (d) Part G, Section 12 – contains consistent procedures for Discharge
- (e) Surveillance Network Program, Part B, Section 5 – provides consistent methods of testing to cut down on potential confusion

To the extent there are any inefficiencies remaining within the regulatory system which are not addressed by BHP Billiton’s proposed wording, it is submitted that those inefficiencies do not amount to a significant public interest and may be addressed in further suggested adjustments to the SPB Licence.

IEMA has also advocated for the application of “special studies” (the exact definition of which is uncertain) between the two licences. However, the extent to which any special study undertaken under one licence should be applied to the regulation of both licences will depend on the particular subject matter of the study and is best left as a decision to be made by the Board on a case-by-case basis.

In summary, it is BHP Billiton’s submission that the Board has no authority to change the scope of the Main Licence so as to amalgamate it with the SPB Licence, and that additionally, there is no compelling public interest sufficient to ground the Board’s authority to amend any condition of the Main Licence at this time. The procedural efficiencies upon which the Agencies and IEMA

ground their request for amalgamation can easily be addressed through the wording BHP Billiton has suggested for the SPB Licence. Therefore, we submit that there is no remaining public interest in, and no legal support for, a directive amalgamating the licences.

Please contact Eric Denholm, Environment Superintendent - Traditional Knowledge and Permitting, at 669-6116 if you have any questions.

Sincerely,

BHP Billiton Diamonds Inc.

A handwritten signature in black ink, appearing to read "Ricus". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ricus Grimbeek
President and Chief Operating Officer
EKATI Diamond Mine