

**INDEPENDENT ENVIRONMENTAL
MONITORING AGENCY**

Evaluation Report

Prepared for:

Independent Environmental Monitoring Agency
P.O. Box 1192
Yellowknife, NT
X1A 2N8

Prepared by:



ES1040, 2500 University Drive NW
Calgary, Alberta T2N 1N4
Tel: 403-220-5271 Fax: 403-282-1287
E-mail: Macleod@macleodinstitute.com

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EXECUTIVE SUMMARY

The Macleod Institute for Environmental Analysis was hired on March 7, 2000 to conduct a performance evaluation of the Independent Environmental Monitoring Agency's programs. The evaluation will serve as a basis for developing plans to improve the effectiveness of the Agency's internal management and its service in the interests of the public and other parties with respect to environmental management of the Ekati Diamond Mine.

The Institute examined the Agency's activities, outputs and outcomes in the context of the *Environmental Agreement* signed on January 6, 1997. In all, 29 interviews were conducted and included individuals from BHP, the governments of Canada and the Northwest Territories, the Dogrib Treaty 11 Council, the Akaitcho Treaty 8, the North Slave Metis Alliance, the Kitikmeot Inuit Association, current and former Agency Directors and current and former Agency Staff. Various documents were also reviewed.

The Institute designed five research questions to focus its program evaluation of the Agency's performance:

1. Is the Agency's mandate clearly understood?
2. Do the parties and stakeholders believe that their desired outcomes are being achieved?
3. Are the activities designed in the best interest of achieving the Agency's mandate?
4. Do the chosen activities result in expected outputs or outcomes (results) as anticipated?
5. Are there factors influencing the Agency's ability to deliver on its mandate?

The Institute gave the Agency a positive rating in some areas, but identified a number of other areas which need improvement.

The Agency's technical (scientific) contributions are generally well accepted. A number of Society members expressed a real feeling of comfort that the Agency is ensuring that BHP's license conditions are being met. Overall, the Agency has succeeded in

- identifying several relevant issues, thereby improving environmental management of the Ekati mine (phosphorous levels at Kodiak Lake is one example);
- facilitating the introduction of BHP's annual environmental effects monitoring workshops and convening Traditional Knowledge workshops; and
- establishing facilities such as a public access library, frequent newsletters and a website.

However, the Agency has been less successful in providing a conduit of information to and from the public and aboriginal communities. Society members anticipated that the Agency would be independent of inappropriate influence from the company and regulators. They did not expect that the Agency would operate in what many see to be isolation from the parties and stakeholders. The Agency needs to build a stronger liaison function, and improve its relationship with the communities.

The Agency has primarily used technical and passive methods of communicating information to its stakeholders. This communications style has not been entirely effective. For example, one respondent said, “Our people wanted information back to the communities. This does not happen by writing technical letters.” Another made the comment that “All we see is piles of written books. We’d like to see more people who could explain this stuff simply to us.” At the same time, however, others said “we are too busy and have many other priorities to address anyways”.

The Institute found that several factors have influenced the Agency’s ability to deliver on its mandate:

- a carry over of previously existing challenges. For instance, many stakeholders had hoped the Agency, an innovation created for the purpose of responding to community concerns about the new Ekati Diamond Mine, would help address long standing concerns about the availability and integration of Traditional Knowledge.
- a carry over of tensions from the BHP hearing process. For example, one interviewee observed that the Agency’s “ability to deal with the DIAND/BHP complicity is essential.” Although everyone noted a general improvement in relations over the past three years, many expressed a desire to see the Agency adopt a more solution-oriented approach in its public watchdog role.
- the *Environmental Agreement* itself sets up some conflicts.
 - One Society member commented that “We wanted a watchdog. But the watched [BHP] controls the budget — the negotiations over budget have diluted [the Agency’s] role.”
 - The *Agreement* calls for ecosystem-based approaches, yet it focuses only on the Project. Differences have therefore arisen over the handling of cumulative effects.
- the speed at which current events are seen to be overtaking the Agency. The number and pace of new diamond mine and other proposals are demanding a change in environmental monitoring strategies to consider the effects of all projects in the region.

The Institute also examined the Agency’s internal management systems, and suggested that improvements be made to provide more strategic focus for the Agency’s work, and to establish a “single voice” for the Agency.

The Institute concluded its evaluation by making nine recommendations which included looking at the Agency’s future role (especially as it relates to the Diavik Environmental Monitoring Advisory Board), developing better communications, finding a better mechanism for establishing Core Budgets being funded by BHP, adopting solution-oriented approaches, ensuring that cumulative effects and Traditional Knowledge are appropriately integrated into BHP’s environmental management systems, and improving the Agency’s own management processes.

Recommendations

In order to develop plans to improve the effectiveness of the Agency's internal management and its service in the interests of the public and other parties with respect to the environmental management of BHP's diamond mine, the Institute recommends that:

1. the Agency's Directors initiate a dialogue with Society members to address the Agency's future role, given additional resource developments in the North. The Agency may wish to explore a number of options such as establishing an alliance with Diavik's Environmental Monitoring Advisory Board, maintaining the Agency's focus on scientific review or incorporating community-based liaison and Traditional Knowledge expertise into the Agency's operations.
2. the Agency work collaboratively with aboriginal communities and members of the public to identify simple and realistic tools and processes to meet its clients' communications and information needs in a realistic manner. Independence must not result in isolation from stakeholders.
3. the Agency's Directors initiate a dialogue with Society members to find more efficient mechanisms for establishing Core Budgets to be funded by BHP.
4. the Agency explore ways in which it could adopt solution-oriented approaches when exercising its role as a public watchdog, and identifying environmental problem areas. Put another way, the Agency needs to be more constructive in its monitoring and advisory roles.
5. the Agency take a broad view of environmental management in order to ensure that the appropriate level of cumulative effects is addressed.
6. the Agency work with all Society members to help BHP integrate appropriate Traditional Knowledge into its environmental management and monitoring programs.
7. the Agency establish a strategic planning process in order to develop a common level of expectation and understanding of how its mandate will be delivered, and include discussions with and among all Society members as part of the process.
8. the Directors establish a clear line of managerial authority within the Agency, to allow for effective delegation, increased outreach and communications, and participation with strategic partners. The Agency must have a "single voice" when required.
9. the Agency implement appropriate internal management performance indicators.

1.0 INTRODUCTION

The Independent Environmental Monitoring Agency (the Agency) retained the Macleod Institute for Environmental Analysis (the Institute) to undertake a "review of its performance in meeting its responsibilities" under an *Environmental Agreement* between Canada (DIAND), the Northwest Territories Government (GNWT) and BHP Diamonds Inc. (BHP) dated January 6, 1997. The *Environmental Agreement* covers environmental and related matters, and is intended to operate in addition to specific regulatory requirements that govern BHP's activities with respect to its exploration, development and mining operations near Lac de Gras (collectively called the "Project" in the *Agreement*). The Agency was registered as a Society having seven members: the three signatories to the *Environmental Agreement* together with the Dogrib Treaty 11 Council, the Akaitcho Treaty 8, the North Slave Metis Alliance and the Kitikmeot Inuit Association.

2.0 TERMS OF REFERENCE

The move to undertake an evaluation of the Agency resulted from a number of factors, including:

- the Agency's Directors and Society members have been working to identify common directions for the Agency;
- requests by all parties to the *Agreement* and several Aboriginal organizations to devote more resources and undertake additional activities to address certain aspects of the Agency's mandate;
- a request by the Agency's primary financial contributor, BHP, to keep its budget as low as possible; and,
- changing demands on environmental assessment and management regimes in the Slave Geologic Province stemming from the introduction of additional projects in the region (including both an expansion in BHP's operations and Diavik's new mine), and discussions regarding a cumulative effects framework for the Province.

The Agency's request for proposal stated that the evaluation will serve as a basis for developing plans to improve the effectiveness of the Agency's internal management and its service in the interests of the public and other parties with respect to environmental management of the Ekati Diamond Mine.

The Institute submitted an Evaluation Proposal on February 25th, 2000 which was accepted on March 7, 2000. It outlined a four step evaluation of the Agency's performance:

1. Program Definition
2. Activity/Output Assessment
3. Analysis and Synthesis
4. Final Report

3.0 EVALUATION DESIGN

Generally speaking, performance evaluations are designed to answer one of four basic questions:

- *program implementation* – is the existing choice of activities the best way to achieve desired goals or outcomes?
- *needs assessment* – is there a need to allocate resources to certain activities?
- *impact evaluation* – what effect do the outputs have on desired goals or outcomes?
- *cost-effectiveness* – is the existing allocation of resources a cost-effective way of achieving desired goals or outcomes?

The Agency (through its Manager, Alexandra Thomson, who was assigned the task of soliciting evaluation proposals, in order to avoid involving Directors in design discussions) indicated its desire to have the evaluation focus on the following (as stated in its Request for Proposal):

- review the Agency's roles and responsibilities under the *Environmental Agreement*;
- assess the Agency's performance to date by reviewing its annual reports, public information documentation, and correspondence, and by interviewing the Agency's Society members and Directors, and representatives from BHP and regulatory authorities in order to understand their needs and perceptions of the Agency; and,
- complete a report to be presented to the Directors and Staff in order to reflect and develop goals for future planning.

This requested evaluation focus points to a *program implementation* evaluation. Typically, issues associated with program implementation fall into three categories:

- *Program Design*: Implementation of a program sets into motion a series of activities to achieve the program design. The actual design, however may fail to meet the needs of the program's clients. The program may not provide the right activities or may deliver them in the wrong way.
- *Program Acceptance*: Program clients must accept a program before they will use it. Factors such as attitudes of program staff, or administrative procedures may alienate acceptance of the program by its intended clients.
- *Program Management*: A program may simply not operate well. Clients may experience delays in getting a response, staff may have poor supervision or a high turnover, and management may be inadequate.

3.1 Research Questions

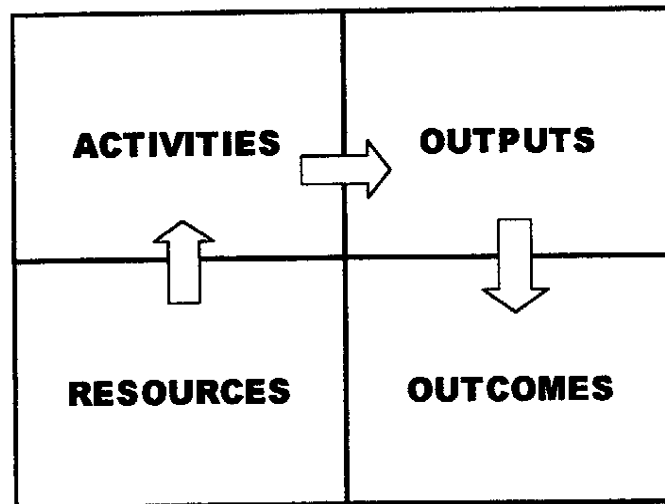
The Institute designed five research questions to focus its program implementation evaluation of the Agency's performance:

1. Is the Agency's mandate clearly understood among the parties and stakeholders?
2. Do the parties and stakeholders believe that their desired outcomes are being achieved through the Agency's activities and outputs?
3. Are the activities designed in the best interest of achieving the goals, or outcomes, of the Agency's mandate as expressed in the *Environmental Agreement*?
4. Do the chosen activities result in expected outputs or outcomes as anticipated?
5. Are there factors influencing the Agency's ability to deliver on its mandate?

3.2 Evaluation Methodology

The evaluation was undertaken in four steps: Program Definition, Activity/Output Assessment, Analysis and Synthesis, and Final Report. First, a basic program model was used to define the Agency's programs (Figure 1). Attention centred on activities, outputs and outcomes given the evaluation's focus on program implementation.

Figure 1: Basic Program Model



Resources (labour, facilities and equipment)

➤ used to carry out Activities

Activities (monitoring, aboriginal participation etc.)

➤ directed to achieving common results

Outputs (services provided)

➤ that, overall, result in desired

Outcomes (the Agency's mandate).

Second, activities and outputs were assessed through interviews and documentary reviews. Table 1 summarizes the sources of information surveyed by the Institute with respect to each of the five research questions:

Table 1: Information Sources

Research Question	Primary Interview Sources	Secondary Documentary Sources
Is the Agency's mandate clearly understood among the parties and stakeholders?	Society Members BHP Regulators Directors Staff	Annual Reports Workplans Correspondence
Do the parties and stakeholders believe that their desired outcomes are being achieved through the Agency's activities and outputs?	Society Members BHP Regulators Directors Staff	Correspondence Minutes of Meetings
Are the activities designed in the best interest of achieving the goals, or outcomes, of the Agency's mandate as expressed in the <i>Environmental Agreement</i> ?	Society Members BHP Regulators Directors Staff	Annual Reports Workplans Minutes of Meetings
Do the chosen activities result in expected outputs or outcomes as anticipated?	Society Members BHP Regulators Directors Staff	Annual Reports Report Reviews Correspondence
Are there factors influencing the Agency's ability to deliver on its mandate?	Society Members BHP Regulators Directors Staff	Ancillary documents Annual Reports Correspondence

Interviews were conducted either in person or by telephone, depending on the logistics of people's schedules and itineraries. In all, 29 individuals were interviewed. An interview outline was prepared and followed in each case. The list of interviewees was determined in consultation with Agency staff, who supplied contact information and helped facilitate arrangements for the interviews. Each in-depth interview took a minimum of one hour. Appendix A includes a copy of the interview outline, a description of the sampling group and a list of interviewees. A number of documents were also reviewed. Appendix B provides a list of the main documents included in the review.

The third step of the evaluation comprised an analysis and synthesis of results from interviews and document reviews. Fourthly, the evaluation report was prepared for presentation to the Agency's Directors and staff.

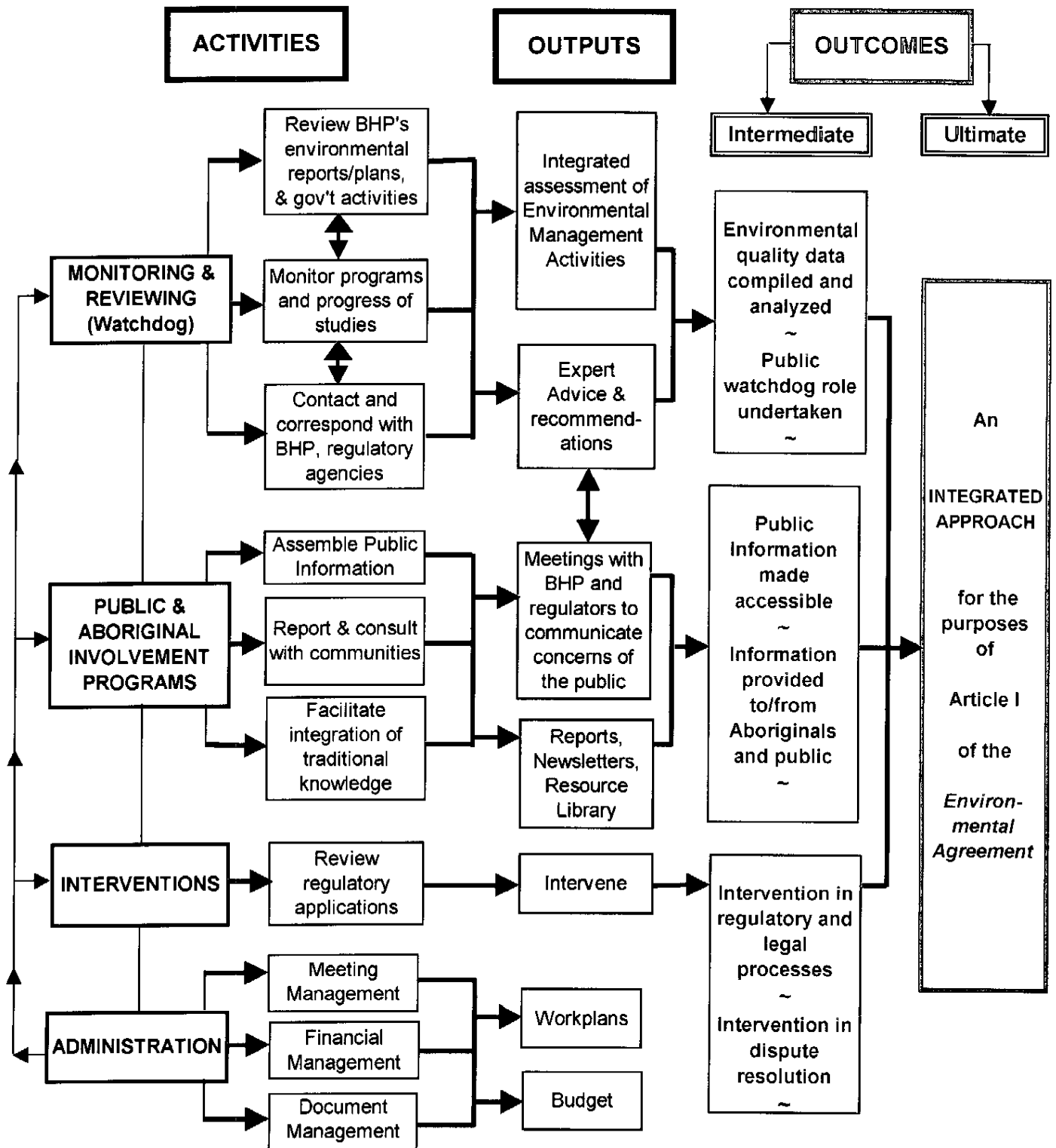
4.0 DESCRIPTION OF THE INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

The Agency is a non-profit society having seven members. The Kitikmeot Inuit Association, the North Slave Metis Alliance, the Dogrib Treaty 11 Council and the Akaitcho Treaty 8 each appoint one director, and Canada, GNWT and BHP jointly and in consultation with the aboriginal communities appoint three directors. The directors do not serve as representatives (*Agreement*, Article IV.4(a)), and choose a chair and vice-chair from amongst themselves. The current chair is Red Pedersen and Dr. Bill Ross is the current vice-chair. One vacancy (the Akaitcho Treaty 8 appointee) currently exists on the Board. The Agency's chief of staff is Alexandra Thomson, who joined the Agency in September 1999. John Holman joined the Agency as Communications Administrator in November 1999.

The Agency was created in 1997 and will continue in existence until final reclamation of the Project site. Funding for the first two years was provided by Canada, GNWT and BHP. Thereafter, BHP is required to fund the Core Budget in an amount negotiated between the Agency and BHP. The Agency's Core Budget for the 2000-2001 fiscal year totals \$461,900 (see Appendix C for details).

The Agency's activities, outputs and outcomes are diagrammed in Figure 2, on the following page. Activities fall within four main categories — Monitoring and Reviewing, Public and Aboriginal Involvement Programs, Interventions and Administration. In its Monitoring and Reviewing capacity, the Agency undertakes activities such as reviewing BHP's environmental reports and data, as well as overseeing the work of various regulators; monitoring programs and progress of studies; and corresponding with BHP and the regulatory agencies. Outputs include an assessment of BHP's environmental management activities and the Agency's expert advice and recommendations. In its Public and Aboriginal Involvement role, the Agency assembles public information, reports and consults with communities and facilitates workshops. Outputs include meetings with stakeholders, a Public Access Library, Traditional Knowledge workshops, newsletters (*The Ekati Monitor*), and Annual Reports. Interventions include participation in regulatory and legal processes. Administration provides support to the other activities; its principal outputs include workplans and budgets.

Figure 2: AGENCY Activities, Outputs and Outcomes



A list of activities and outputs as described by the Agency in its 1999-2000 Workplan is included in Appendix C.

The Agency's outcomes are defined by the *Environmental Agreement* (Article IV.2, Mandate). First order outcomes include compilation and analysis of environmental quality data; implementation of the public watchdog role; accessible public information; project information provided to and from aboriginal communities and the public; and interventions in regulatory, legal and dispute resolution processes. Ultimately, the Agency's outputs are meant to provide an integrated approach for the purposes of Article I of the *Environmental Agreement*.

The *Agreement* stipulates that Canada, GNWT and BHP wished to ensure that environmental and related matters in respect of the Project (in addition to requirements imposed by legislative and regulatory instruments) be expressly addressed in a legally binding agreement. Much of the *Agreement* is, accordingly, devoted to outlining BHP's responsibilities. Overall, it is intended to achieve a respect for, and protection of, the land-based economy essential to aboriginal well-being; to facilitate ecosystem-based approaches for Project management, regulation and monitoring; to assist BHP in managing the Project consistent with the purposes; to maximize effective, co-ordinated environmental monitoring and regulation; and to facilitate effective aboriginal and public participation. Appendix C sets out the Agency's mandate, together with the *Agreement's* overall purposes, as written in Articles IV and I of the *Agreement*.

5.0 EVALUATION FINDINGS

Based on its stakeholder interviews and document reviews, the Institute has undertaken a (mostly qualitative) analysis and synthesis of results. Evaluation findings are organized around the five research questions outlined earlier (section 3.1 and Table 1). The first four questions focus on implementation of the Agency's responsibilities. The fifth question deals with a broader range of issues that affect the Agency in its ability to implement its responsibilities.

5.1 Is the Agency's mandate clearly understood among the parties and stakeholders?

The Agency's mandate is an important consideration in evaluating effectiveness with respect to program implementation. Without a clear understanding of the ultimate goals intended to be achieved, it is difficult if not impossible to implement programs that deliver desired outcomes. To establish a finding that the mandate is clearly understood among the parties and stakeholders, the Institute was looking for evidence that they share a common view of what the Agency is meant to deliver. The shared vision need not be expressed in exactly the same way by every individual. However, some fundamental sense of common purpose must exist before a clear understanding among parties and stakeholders is demonstrated. Interviews provided the main source of information for this research question, primarily questions around what the interviewee understood to be the Agency's mandate, and what the Agency does to deliver on its mandate.

The Institute finds that parties and stakeholders collectively hold a broad, but not necessarily a clear, understanding of the Agency's mandate. Virtually all the interviewees felt the Agency was set up to accomplish two things — environmental quality analysis and the watchdog role (often referred to as the “technical” side of the mandate), on the one hand, and information dissemination, especially with aboriginal and community groups (sometimes referred to as “communications” or the “feedback loop”), on the other. Many respondents also spoke about the Agency's role in achieving an integrated approach to environmental management, regulation and monitoring. So, in a broad sense, the parties and stakeholders demonstrated a common view of what the Agency is meant to deliver.

To say that parties and stakeholders share a sense of common purpose on how to *deliver* on the mandate, however, would be stretching the point. Although there appeared to be widespread agreement that “monitors looking after the monitors” is an important and necessary function, varying degrees of emphasis were placed on different aspects of the Agency's role. For example, one government employee stressed that the Agency was “created to help the company”, while another remarked that the main reason for its existence is that there are “numerous examples where the required regulator follow up has not occurred”. Other respondents blurred the distinction between overseeing and actually undertaking work. Many pointed out a desire for the Agency to do more hands-on studies, but recognized that the Agency's budget has limited its capacity in this respect. Interpretations of the scope of the Agency's work in assessing cumulative effects also differed significantly. The Agency, communities and aboriginal groups clearly focused on what is broadly happening on the land, to the water and with the caribou, while BHP and regulators felt the Agency should look at cumulative effects only on the project site.

Effective participation by aboriginal communities and the general public was given different interpretations, as well. For some, distributing information in “lay language” is sufficient; others want a more active role. As one person commented, “now all we see is documents — our people are not involved. We'd like to help in the design of these [BHP's] studies, not just get feedback on results. Traditional Knowledge is not listening to consultants.”

5.2 Do the parties and stakeholders believe that their desired outcomes are being achieved through the Agency's activities and outputs?

One measure of effectiveness in program implementation is “customer satisfaction”. The Institute therefore looked at whether Society members and other stakeholders of the Agency believe their desired outcomes are being achieved through its activities and outputs. Interviews provided the main source of information for this research question, primarily questions about perceived strengths and weaknesses of the Agency's chosen activities and whether it is delivering on its mandate as anticipated. Answers varied depending on the activity being addressed.

Almost all respondents felt that the Agency contributed significantly to improving environmental management at the mine from a scientific perspective. In large part, its Monitoring and Reviewing function was seen to deliver good results. Raising concerns about dissolved oxygen and phosphorous levels at Kodiak Lake, and focusing attention on the acid rock drainage issue were often cited as positive examples of the Agency's work. As one Society member stated, reflecting a view shared by others, "we have a real feeling of comfort that the Agency is making sure that the Licences are being adhered to."

BHP's annual monitoring workshops represent another initiative that has been well-received. The Agency is generally given credit for having introduced the idea to BHP, and encouraging the company to discuss aquatic and wildlife monitoring results and plans for next year's monitoring program in a public forum.

Although all stakeholders recognize the Agency's technical expertise, they do not all value it equally. Some regulators tend to downplay the Agency's technical contributions, saying that expert departments were already on top of the issues. With one or two exceptions, respondents representing non-aboriginal Society members were inclined to express satisfaction with the Agency's technical contributions.

Public and Aboriginal Involvement Programs overall registered low on the customer satisfaction scale. The most positive comments were directed towards the Traditional Knowledge workshop and meetings the Agency convened in 1998. Although all stakeholders expressed general frustration with the lack of progress in integrating Traditional Knowledge and experience into environmental plans and programs, most recognized that the Agency's function is to review, report or make recommendations in this regard, not to implement TK programs (Article IV.2(c), *Environmental Agreement*). Implementation is the responsibility of BHP. Still, the fact that the Agency has not been able to move the issue forward more quickly is often seen to be a failure to deliver on its mandate as anticipated.

All interviewees, including Agency Directors, felt that the Agency as a whole has yet to find an effective means of communicating with aboriginal communities and the general public. Part of the reason lies in the nature of activities undertaken and outputs produced. Since the Agency has focused on scientific reviews, much of its output has taken the form of technical reports written for a technical audience. This kind of material found limited appeal in the broader community. As one respondent said, "Our people wanted information back to the communities. This does not happen by writing technical letters." Another made the comment that "All we see is piles of written books. We'd like to see more people who could explain this stuff simply to us."

Two points are being made here. One is that the Agency is seen to be unable to distill any significant meaning for the communities from its monitoring and reviewing activities. The second is that personal contact is very important. A central dynamic expressed by respondents was that the Agency has not built a strong liaison function and relationship with communities. However, Society members also explicitly recognized they have many pressing priorities; these days, the Ekati mine is only one among several projects.

Turning to other activities, the Agency's Interventions function was rarely discussed in the context of strengths and weaknesses, and delivering on the mandate as anticipated. To date, the Agency has not intervened in any regulatory, legal or dispute resolution processes.

Administration activities received a mixed review from respondents. Unless directly involved on a daily basis with administrative support functions, most interviewees (including some Agency Directors) simply said they were unaware of the details of what is happening in this area of activity. However, recent additions to staff have generated positive comment. For example, one interviewee pointed out that communications are improving since the Agency's Manager joined the Inter-Agency Coordination (IAC) Team, offered to write the minutes and now routinely distributes them to all members of the Team, as well as to Society Members.

5.3 Are the activities and outputs designed in the best interest of achieving the goals, or outcomes, of the Agency's mandate, as expressed in the *Environmental Agreement*?

Implementing programs means taking action. Activities supply the basic ingredients for effectiveness, provided they are designed in the best interest of achieving the desired outcomes. If the right activities are chosen, and if they are delivered in the right way, program implementation will likely be effective. The Institute assessed design by looking for "gaps" in activities (that is to say, for activities that have not been chosen), and by looking for signs that the Agency's activities in some way inherently inhibit outputs. Document review was the main source for this research question, primarily Workplans, Board Minutes and Annual Reports, although interviews also contributed some useful insights.

As summarized in Figure 2, the Agency has undertaken two main activity streams to help deliver on its mandate — Monitoring and Reviewing, and Public and Aboriginal Involvement Programs.

With respect to its Monitoring and Reviewing activities, the Institute finds that the Agency's activities are designed to achieve its mandate, but that certain design features tend to limit program effectiveness. For example, review priorities appear to be chosen primarily on the basis of particular expertise and experience represented at the table. More than one respondent noted that the Agency has the "best experts in Canada". The Agency's technical strength, however, in some ways also creates a limitation. Environmental problem areas can be missed because the expertise which would recognize the problem area is missing from the Agency.

In addition, the Agency does not seem to have any management systems in place to make strategic choices between activities. As a result, its choice of specific activities to be undertaken in any given workplan period tends to lack focus. The 1999 – 2000 Workplan (Appendix C), for example, provides a general description of the types of reports or data to be reviewed, but fails to give any sense of a strategic approach to the issues it faces.

Another limitation is presented by the Agency's interpretation of its status as an organization of public record. The Agency issued a Policy Statement entitled *Information Exchange, Communication and Coordination* on January 11, 1998, after consultation with Canada, GNWT and BHP (see Appendix C for full details). The Policy states that all materials authored by the Agency and all "relevant material" received by the Agency will be promptly placed on the public registry (paragraphs 18 and 19). However, Canada, GNWT and BHP may request that "specific information ... not be placed on the public registry for a specified period of time", in which case the Agency will "either comply with the request or, if deemed more appropriate, immediately return the material to the authoring body" (paragraph 20). This design feature inhibits a completely full flow of information to the Agency, since it has in some instances created a sense of uncertainty about information sharing with the Agency, particularly as it relates to regulatory confidentiality.

Compliance regulators are obliged to maintain confidentiality in a number of situations. If potentially illegal conduct is alleged or suspected, the regulator must proceed with caution until it has determined whether grounds for legal action can be established. Until this process is completed, it would be quite properly deemed inappropriate to disseminate any information. Similarly, if information is shared with the regulator on a confidential basis due to potential competitive advantage, it would be inappropriate for the regulator to divulge any details.

The Agency's Policy Statement provides a mechanism by which sensitive materials may be kept confidential, and, on occasion, edited documents have been filed on the registry to ensure that only essential information is made public. Nevertheless, most respondents primarily emphasized that the Agency is a *public* body. As one person stated, "the Agency is 'open' all the time, while we must be 'closed' part of the time." This perception has caused all parties to withhold information from time to time.

The Institute finds that activities related to Public and Aboriginal Involvement Programs are designed to deliver on the Agency's mandate, at least on the surface. However, the way in which the activities are delivered is not meeting all clients' needs. Reports are inclined to be written for a technical audience, and delivery systems tend to be passive rather than personal and interactive. "The Agency is so independent it takes on its own life", according to one interviewee. Another client was reported to say that the Agency "was to work on our behalf, but it feels independent of even us." In effect, then, the activities are designed in the best interest of achieving goals. But they fail in delivery, because the outputs do not meet the needs of people making environmental decisions in aboriginal communities (i.e., Land and Environment Committees).

Many respondents noted that the Agency has failed to present itself as a unified body, and has low or no visibility in the larger community. One interviewee noted that the “inability of the Directors to work together as a group is a weakness. They’re a prickly group of experts.” The Directors have not made a practice of delegating ongoing outreach or other “corporate” responsibilities to the Chair and staff (all of whom reside in the North). Without a single voice to represent the Agency over time, it is difficult to establish a credible public presence. Moreover, only 14% of the Agency’s 2000 – 2001 budget is set aside for “Communication/Consultation” (see Appendix C). These amounts are earmarked for one annual report, eight newsletters, an unspecified number of brochures, a website and five meetings or presentations per year in aboriginal communities.

A number of activities associated with Administration appear to have design flaws. The process of negotiating Core Budgets is one example. The *Environmental Agreement* has created a situation in which the Agency and BHP must negotiate funding every two years (Article IV.6(c and d)). Given the respective roles of the two entities, it is not surprising that the most recent (and first) round of negotiations took eight months to complete and that relationships were severely strained as a result. In addition, workplans are prepared in isolation from parties and stakeholders, and the Agency has not (likely due to a lack of full time staff in previous years) instituted a system of internal management performance indicators.

5.4 Do the chosen activities result in expected outputs or outcomes as anticipated?

The ultimate test of an activity is whether it actually results in expected outputs, which in turn help bring about positive outcomes. The Institute therefore looked for examples of activities which resulted in anticipated outputs and outcomes. Both interviews (particularly questions about whether the mandate was achieved) and documents such as correspondence relating to mandate delivery were used as sources to explore this research question.

Monitoring and Reviewing activities have in fact resulted in desired outcomes. All members of the Society felt that the Agency’s recommendations regarding technical environmental issues have helped improve environmental management of the Project.

The Agency has, over the past three years, identified a number of relevant issues such as the need to convene meetings and a workshop regarding Traditional Knowledge, aquatic and wildlife environmental effects monitoring workshops, acid rock drainage, eutrophication and cumulative effects. As a result, aboriginal and community representatives have expressed a strong sense of comfort about the Agency’s role. Given their historical lack of trust in the ability of government regulators to ensure adequate environmental management, it is all the more impressive that one interviewee said she takes “comfort that an independent voice is looking after our interest to protect the land, being our watchdog.” Regulators also recognize that, as one individual said, “there is better protection because of the Agency.”

With respect to Public and Aboriginal Involvement Programs, the Agency has undertaken several initiatives, including:

- a public access library;
- a website;
- various reports (annual and other);
- the Ekati Monitor newsletter;
- various information brochures;
- meetings with various communities such as Ft. Rae, Dettah and Lutsel K'e, to discuss the role of the Agency; and
- facilitated workshops, especially for Traditional Knowledge.

Although communications has been criticized by all the parties and stakeholders (including the Agency's Directors), the Agency has in fact undertaken activities which have contributed in some degree to their mandated role of disseminating information.

5.5 Are there factors influencing the Agency's ability to deliver on its mandate?

The first four research questions focused on implementation of the Agency's responsibilities. This fifth question deals with a broader range of issues that affect the Agency in its ability to implement its responsibilities. As with any undertaking, events and circumstances surrounding the organization can have a significant effect on its ability to deliver on its mandate. Both interviews and document reviews served as sources for this research question. Interview questions respecting internal and external factors influencing the Agency, and documents such as Annual Reports, the West Kitikmeot Slave Study, the Diavik Environmental Agreement and correspondence were particularly relevant.

The Institute has looked at four issues — carry over of previously existing challenges; carry over of tensions from the BHP hearing process; the *Environmental Agreement* and the speed at which current events are seen to be overtaking the Agency.

Many respondents alluded to the fact that the Agency was created to address challenges that had been in existence for some time. For example, issues with respect to the integration of Traditional Knowledge existed before the Agency was created, and stakeholders hoped it would help address these long standing concerns. As one regulator said, the expectation that an arm's length agency could quickly overcome such concerns must first recognize the reality that it was a problem to start with. Some interviewees noted that expectations may now be focused on the Agency, rather than on BHP, governments or aboriginal communities. In any event, the inability for all groups to find an acceptable method of using Traditional Knowledge limits the Agency in its mandate to facilitate its integration in the Project's environmental management.

A second issue affecting the Agency's ability to deliver on its mandate is the carry over of tensions from the BHP hearing process and subsequent negotiations for various agreements. Expectations and desired outcomes differed radically between stakeholders. Conflicts arose from the start, and appear not to have entirely dissipated over time, although many respondents noted that relations are improving. One interviewee said, "The Agency takes a lot of bashing because they stand up to some issues. Their ability to deal with the DIAND/BHP complicity is essential." That said, still the parties and stakeholders perceive that the Agency has not done all it could to ameliorate the situation. Many comments were directed to its independence as being somewhat extreme, and a desire to see the Agency adopt a more solution-oriented stance was frequently expressed.

The Environmental Agreement itself sets up some conflicts. Agency funding was set for the first two years through the *Environmental Agreement* where BHP funded \$350,000 and Canada and the GNWT alternately funded \$100,000. Setting out the funding for future years became the job of the Agency and BHP. This arrangement has created a situation in which the watchdog asks the watched for their funding. Both the company and Agency Directors have said that this is an unworkable situation. Funding "discussions" are seen to be negotiations over mandate and scope of an Agency mandated to be independent. One Society member commented that "We wanted a watch dog. But the watched controls the budget — the negotiations over budget have diluted their [the Agency's] role."

The *Environmental Agreement* also created a set of independent appointments by the seven members of the society, with Canada, BHP and the GNWT jointly agreeing on their three appointments. Some respondents pointed out that many Boards and committees have their members selected for a sense of balance and coherence. Agency Directors, having been selected more independently, were chosen as recognized experts but not necessarily as individuals with skills to round out a team. Moreover, the representative capacity of Agency Directors has been viewed in different ways by different Society members. Aboriginal members have a stronger interest in having their appointee take on more of an advocacy role at the Agency. The *Environmental Agreement*, however, specifically states that appointees do not represent Society members.

Finally, nearly all respondents observed that events are passing the Agency by. The number and pace of new diamond mine and other proposals for the Slave Geologic Province creates a situation in which the monitoring regime and environmental management strategies need to change in order to consider the effects of all projects in the region. The scope of the Agency, however, being tied specifically to one project, limits its ability to consider cumulative effects. Efforts made by the Agency to address broader cumulative effects issues for the region, such as recognizing the broad scope of effects that need to be considered for valued ecosystem components like the Bathurst Caribou Herd or the Coppermine River drainage basin, have been rigourously opposed by both regulators and the company.

The role of the new Environmental Monitoring Advisory Board for the Diavik diamond mine creates another model to oversee environmental management in the region. Many interviewees expressed a preference for the Diavik model. One respondent summarized this point of view by saying, "the Agency is under-sourced to deal with the communications issue, and the Directors are overqualified to do that. The Diavik Agreement recognized this." Nevertheless, the Diavik model still addresses only one project. The future role of the Agency and the Advisory Board will need to be addressed together to consider how environmental management for the region and both projects can be coordinated.

6.0 SUMMARY AND CONCLUSIONS

This evaluation has focused on the Agency's request to "review its performance in meeting its responsibilities" as mandated by the *Environmental Agreement*. The Institute has conducted a program implementation assessment centred on five research questions regarding the parties' and stakeholders' understanding of the mandate, their perception of achieving desired outcomes, activity design, activity results, and other factors influencing the Agency's ability to deliver on its mandate.

The Institute's evaluation findings are summarized below:

1. Is the Agency's mandate clearly understood?

The parties and stakeholders collectively hold a broad, but not necessarily a clear, understanding of the Agency's mandate. While a broad understanding of the mandate exists, a sense of common purpose on how to deliver on the mandate in the interests of the parties and stakeholders is not very evident. The Agency's role is given differing interpretations in three main areas:

- focus: the difference between operating as an independent observer of both the company and regulators, and being "created to help the company";
- operating mode: the difference between overseeing and facilitating activities undertaken by the company and regulators, and actually undertaking field studies or integrating Traditional Knowledge; and
- cumulative effects: the difference between assessing cumulative effects in the region and assessing cumulative effects on the Project site.

2. Do the parties and stakeholders believe that their desired outcomes are being achieved?

The perception of the parties and stakeholders is that the Agency has contributed significantly to improving environmental management at the mine, but that improvement is needed in a number of areas.

- The Agency's technical (scientific) contributions are generally well accepted. A number of Society members expressed a real feeling of comfort that the Agency is ensuring that the Licenses are being adhered to.
- With respect to public and aboriginal involvement, integration and development of Traditional Knowledge was initially seen to be a weakness of the Agency, but its role in facilitating the Traditional Knowledge Workshops has (generally) led to improved stakeholder perceptions.
- The Agency was also seen to be unable to distill any significant meaning for the communities from its monitoring and reviewing activities. Personal contact is important to stakeholders, as well as a stronger liaison function and relationship between the Agency and communities.
- Integration of Traditional Knowledge was recognized by all parties as a previously existing challenge, and communications was seen to be made more difficult due to other pressing issues such as land claims, community priorities and historical relationships.

3. Are the activities designed in the best interest of achieving the Agency's mandate?

The Agency designed activities to achieve its mandate. It adopted a series of activities and made many efforts to cover the responsible areas of its mandate. Certain design features have limited program effectiveness including:

- With respect to Monitoring and Reviewing activities,
 - a lack of management systems and partnerships which provide a strategic focus for the work of the Agency; and
 - the Agency's public record status that limits its access to regulatory and corporate information.
- With respect to Public and Aboriginal Involvement activities,
 - technical and passive methods of communicating information vs the personal and interactive nature of communities and aboriginal groups; and
 - a lack of management systems creating a single voice to represent the Agency over time.
- With respect to Administration activities,
 - an unsatisfactory process of negotiating Core Budgets;
 - preparation of Workplans in isolation from stakeholders; and
 - a lack of internal management performance indicators.

4. Do the chosen activities result in expected outputs or outcomes (results) as anticipated?

The Agency's chosen activities have resulted in desired outcomes to a greater or lesser degree, depending on the nature of the activities. Its technical contributions have largely met party and stakeholder expectations, but its activities to provide a conduit of information to and from the public and aboriginal communities have been less successful. Society members anticipated that the Agency would be independent of inappropriate influence from the company and regulators. They did not expect that the Agency would operate in what many see to be isolation from the parties and stakeholders.

The Agency has, however, succeeded in

- identifying a number of relevant issues, thereby improving environmental management of the Ekati mine (phosphorous levels at Kodiak Lake is one example);
- facilitating the introduction of BHP's annual environmental effects monitoring workshops and convening Traditional Knowledge workshops; and
- establishing facilities such as a public access library, frequent newsletters and a website.

5. Are there factors influencing the Agency's ability to deliver on its mandate?

A range of factors have influenced the Agency's ability to deliver on its mandate, including:

- a carry over of previously existing challenges;
- a carry over of tensions from the BHP hearing process;
- the *Environmental Agreement*, and,
- the speed at which current events are seen to be overtaking the Agency.

In conclusion, the results of the Institute's evaluation suggest a number of issues with respect to the effective implementation of the Agency's programs:

Design:

The Agency's activities design is reasonable, given its mandate. However, many clients' information needs and expectations are not being met. Technical reports and recommendations meet the needs of regulators, but were not delivered in a user-friendly format for the public and Aboriginal groups.

The Agency's design was limited in scope to the Project, and in some respects it is driven by BHP's choice of activities. BHP funds and controls, at least in the initiating stages, what and how various environmental management and monitoring programs, reports and plans will be implemented. The Agency must then react, both to the company and to the governments' regulatory responses. A certain amount of tension is inevitably created when the Agency seeks to exercise its responsibilities, especially with respect to Traditional Knowledge and regional cumulative effects assessments. Nevertheless, the *Environmental Agreement* calls upon all parties to achieve holistic and ecosystem-based approaches for monitoring, management and regulation of the Project.

Acceptance:

Acceptance of the Agency's role by the parties and stakeholders has gradually improved over the past three years, but remains limited in two ways:

- The company had originally proposed a different model for environmental oversight and has not been supportive of the concept underlying the Agency's programs. Also, some government and regulatory authorities still have little acceptance of the Agency's role.
- Aboriginal and community interests accept the Agency's role as a scientific watchdog. Nevertheless, they continue to have aspirations of control, ownership and funding for Traditional Knowledge and its integration into environmental management. Therefore, they have not fully accepted the Agency's role as a mere facilitator in this area.

Management:

In its efforts to be independent, the Agency has operated somewhat in isolation from other organizations and community and aboriginal interests. The degree of independence the Agency has undertaken has significantly limited its ability to build effective partnerships and realistic expectations with organizations and initiatives.

Utilization of staff to undertake more outreach, such as participation on the Inter-Agency Coordination Team and with communities, will provide more understanding of the role and outputs of the Agency.

7.0 RECOMMENDATIONS

In order to develop plans to improve the effectiveness of the Agency's internal management and its service in the interests of the public and other parties with respect to the environmental management of BHP's diamond mine, the Institute recommends that:

1. the Agency's Directors initiate a dialogue with Society members to address the Agency's future role, given additional resource developments in the North. The Agency may wish to explore a number of options such as establishing an alliance with Diavik's Environmental Monitoring Advisory Board, maintaining the Agency's focus on scientific review or incorporating community-based liaison and Traditional Knowledge expertise into the Agency's operations.
2. the Agency work collaboratively with aboriginal communities and members of the public to identify simple and realistic tools and processes to meet their clients' communications and information needs in a realistic manner. Independence must not result in isolation from stakeholders.
3. the Agency's Directors initiate a dialogue with Society members to look for more efficient mechanisms for establishing Core Budgets to be funded by BHP.
4. the Agency explore ways in which it could adopt solution-oriented approaches when exercising its role as a public watchdog, and identifying environmental problem areas. Put another way, the Agency needs to be more constructive in its monitoring and advisory roles.
5. the Agency take a broad view of environmental management in order to ensure that the appropriate level of cumulative effects is addressed.
6. the Agency work with all Society members to help BHP integrate appropriate Traditional Knowledge into its environmental management and monitoring programs.
7. the Agency establish a strategic planning process in order to develop a common level of expectation and understanding of how its mandate will be delivered, and include discussions with and among all Society members as part of the process.
8. the Directors establish a clear line of managerial authority within the Agency, to allow for effective delegation, increased outreach and communications, and participation with strategic partners. The Agency must have a "single voice" when required.
9. the Agency implement appropriate internal management performance indicators.

APPENDIX A

INTERVIEWS

- Interview Guide
- Interview Sample
- Interviewees

1.0 INTERVIEW GUIDE

Purpose of the Interview

We are currently in the process of undertaking an evaluation for the Independent Environmental Monitoring Agency.

The Macleod Institute for Environmental Analysis was hired by the Agency to undertake this review.

In this interview we are hoping to obtain your views on the Agency to help the Agency in its desire to improve its effectiveness.

Specifically, we are hoping to discuss:

- How the Mandate is understood.
- If the activities of the Agency are designed in the interest of achieving the Agency Mandate?
- How stakeholders believe their desired objectives in the Mandate are being achieved?
- Whether the actions of the Agency are resulting in the desired results?
- Other comments you may have.

Background

Please describe your role and responsibilities as they relate to the Agency and/or the Society. What is the relationship between the Agency your organization?

Which aspects of the Agency are you most familiar with?

Evaluation Questions

These questions are used to help guide discussion and cover a range of issues:

How the Mandate is understood.

- What does this (each mandate item) mean to you, your organization?
- What would be some indicator or evidence that would show success in each area?

How the activities of the Agency deliver on the Mandate

- What are the major strengths and weaknesses of the Agency activities?
- What has happened as a result of the Agency activities?
- Should more emphasis be placed upon certain areas of the Agency Mandate?
- Are the links between the activities of the Agency and the mandate realistic (plausible)?
 - Why?
 - Why not?
- Are there factors, internal to the Agency that may influence its effectiveness in delivering on its Mandate?
- Are there external factors that may influence the Agency's ability to deliver on its Mandate?

How the parties feel the Mandate is being delivered on

- Is the Agency delivering on its Mandate as originally intended?
 - If no, in what way?
- Is it realistic, all things being considered, that the Agency can deliver its Mandate?

Do you have any other comments on the Agency activities?

2.0 INTERVIEW SAMPLE

In setting the interviews, a certain amount of turnover among Society personnel working with or for the Agency became evident. Efforts were then made to contact individuals who had an historical perspective on the Agency, as well as people currently on the file.

A sample of the following groups was used to get a representative set of perspectives on the Agency. These included representatives of:

Seven Society Members who represent the signatories to the *Environmental Agreement* which established the Agency.

Seven Agency Directors appointed by the Society members to conduct the affairs of the Agency. There were six Directors at the time of the evaluation. A past and only other Director to serve was also selected.

Agency Staff who manage the affairs of the Agency on behalf of the Directors. Two existing staff and two past staff contractors were selected.

Community interests are often expressed through Aboriginal Group discussions. Aboriginal interests were identified through their Society membership.

3.0 INTERVIEWEES

- Akaitcho Territory Tribal Council,
Chief Felix Lockhart
- BHP Diamonds Inc.,
Scott Williams,
Manager, Environment & Resource Planning
- BHP Diamonds Inc.,
Denise Burlingame
Public Relations Manager
- Dept. of Fisheries & Oceans,
Christa Domchek,
Fish Habitat Compensation Fund Coordinator
- DIAND, Renewable Resources & Environment
David Livingston,
Director
- DOGRIB Treaty 11 Council,
Violet Blondin,
Land Claims Manager
- Environment Canada,
Anne Wilson,
Senior Water Pollution Biologist
- GeoNorth, Agency Contract Administrators
Hal Mills
- GNWT, Dept. of Research, Policy & Legislation
Kelly Robertson,
Manager
- Lutsel k'e First Nation
Brenda Parlee,
Lands & Environment Committee
- BHP Diamonds Inc.,
Chris Hanks,
Environmental Specialist
- Canadian Arctic Resources Committee,
Kevin O'Reilly,
Director of Research (former Director, Agency)
- Dept. of Fisheries & Oceans
Ron Allan,
Regional Area Manager
- DIAND, Environment & Conservation
Greg Cook,
BHP Environmental Scientist
- DIAND, Environment & Conservation
Mary Tapsell,
Manager
- DOGRIB Treaty 11 Council,
Ted Blondin,
Land Claims Manager
- GeoNorth, Agency Contract Administrators
Janice Traynor
- GNWT, Dept. of Research Policy & Legislation
Steve Mathews,
Wildlife
- Kitikmeot Inuit Association
Jack Kaniak,
Land Manager
- North Slave Metis Alliance,
Bob Turner

- Yellowknives Dene First Nation
Rachel Crapeau,
Lands & Environment Committee
- Agency
Peter McCart,
Director
- Agency
Tony Pearse,
Director
- Agency
Bill Ross,
Director
- Agency
John Holman,
Communications Administrator
- Agency
Fikret Berkes,
Director
- Agency
Francois Messier,
Secretary Treasurer
- Agency
Red Pedersen,
Chairperson
- Agency
Alexandra Thomson,
Manager

APPENDIX B

DOCUMENTS

LIST OF DOCUMENTS

Environmental Agreement signed by Canada, the Government of the Northwest Territories and BHP Diamonds Inc. as of January 6, 1997.

Annual Reports

Independent Environmental Monitoring Agency:

- 1998 – 1999.
- 1997 – 1998

BHP Diamonds Inc.

- 1998 EA Annual Report (and plain language summary)
- 1997 EA Annual Report, Environmental Summary

Board of Directors Meetings

Independent Environmental Monitoring Agency: Minutes of meetings dated

- | | | | | | |
|------|-------------|------|------------|------|-----------|
| 1999 | • December | 1998 | • December | 1997 | • October |
| | • September | | • November | | • August |
| | • July | | • August | | • June |
| | • April | | • June | | • May |
| | • February | | • May | | |
| | | | • March | | |
| | | | • January | | |

Annual General Meetings

Independent Environmental Monitoring Agency: Minutes of meetings dated

- July, 1999
- June, 1998

Workplans

Independent Environmental Monitoring Agency

- 1999 – 2000
- 1998 – 1999
- 1997 – 1998

Other Agreements, Reports etc.

- DIAVIK Environmental Agreement, March 8, 2000, signed by the Department of Indian and Northern Development, the Government of the Northwest Territories, Diavik Diamond Mines Inc., Dogrib Treaty 11 Council, Lutsel K' Dene Band, Yellowknife Dene First Nation, North Slave Metis Alliance and Kitikmeot Inuit Association
- Independent Environmental Monitoring Agency, February 1, 2000. *The BHP Environmental Agreement Compliance Report for Mackenzie Valley Environmental Impact Review Board's Environmental Assessment of BHP's Proposed Beartooth, Pigeon and Sable Extension Project.*
- West Kitikmeot Slave Study Society, 1998 – 1999. Annual Report.
- Mackenzie Valley Environmental Impact Review Board, 1998. *Environmental Impact Assessment in the Mackenzie Valley.*
- Kevin O'Reilly, October 1998. *The BHP Independent Environmental Monitoring Agency as a Management Tool.*
- The Ekati Monitor, August 1998 and other issues. *Progress for Environmental Management at Ekati.*
- Independent Environmental Monitoring Agency, June 1998. *Aboriginal and Community Issues at Ekati Diamond Mine.*
- Independent Environmental Monitoring Agency, January 11, 1998. Policy Statement: Information Exchange, Communication and Coordination.
- Canadian Environmental Assessment Agency, June 1996. Report of the Environmental Assessment Review Panel: *NWT Diamonds Project.*

APPENDIX C

BUDGET, ACTIVITIES, INFORMATION PROTOCOL, MANDATE AND PURPOSE

- 2000 – 2001 Core Budget
- Activities/Outputs: 1999 – 2000 Workplan
- Policy Statement:
Information Exchange, Communication and Coordination
- Mandate: Article IV, *Environmental Agreement*
- Purpose: Article I, *Environmental Agreement*

1.0 2000 – 2001 CORE BUDGET

The following table summarizes the expenditures (rounded to \$1,000s) for the budget categories for the 1999-2000 fiscal year. The 2000-2001 core budget will be increased 2.5% where appropriate due to inflation.

A. Operations	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	1999- 2000	2000- 2001
1. Rent	6.5	4.3	-	-	10.8	-
2. Insurance	0.5	0.5	0.5	0.5	2.0	2.5
3. Telephone, Fax, internet	1.5	1.5	1.5	1.5	6.0	6.2
4. Rental—office equipment	2.0	1.1	-	-	3.1	-
5. Office supplies, software	1.5	1.5	1.5	1.5	6.0	6.2
6. Postage, courier, freight	0.5	0.5	0.5	0.5	2.0	2.1
7. Bookkeeping	0.5	0.5	0.5	0.5	2.0	2.1
8. Auditing, accounting	0.0	0.0	0.0	4.5	4.5	4.5
Subtotal					36.4	23.6
B. Board Support						
1. Travel	16.0	16.0	8.0	8.0	48.0	49.2
2. Accommodation	6.0	6.0	3.0	3.0	18.0	18.5
3. Meals	2.0	2.0	1.0	1.0	6.0	6.2
4. Honoraria (Note 1)	44.1	31.5	44.1	31.5	151.2	151.2
5. Service Charges	4.2	-	-	-	4.2	-
Subtotal					227.4	225.1
C. Communication / Consultation						
1. Communication (Note 2)	28.0	1.0	1.0	1.0	31.0	31.8
2. Community consultation (Note 3)	8.0	8.0	8.0	8.0	32.0	32.8
Subtotal					63.0	64.6

D. Staffing	1 st Quarter	2 nd Quarter	3 rd Quarter	4 th Quarter	1999- 2000	2000- 2001
1. Office Management Contract	42.2	40.0	-	-	82.2	-
2. Manager	-	-	15.3	15.3	30.6	63.0
3. Administrative Assistant	-	-	10.0	10.0	20.0	41.0
4. Benefits & Payroll Taxes	-	-	5.0	5.0	10.0	20.0
5. Outside Experts	6.0	6.0	6.0	6.0	24.0	24.6
Subtotal					166.8	148.6
				Total	493.6	461.9

1. Based on 6 meetings/yr (3 days each) and 1.5 days/month/director for office work and participation in workshops. Meetings are planned in April, June (with AGM), August, October, December and February (with workshops). Honoraria should not be increased by 2.5% inflation.
2. Annual report (\$24k), 8 newsletters (\$4.5k), brochures (\$1.0k) and web site (\$1.5k)
3. Extra cost for holding meetings in communities, and attendance/presentations at aboriginal assemblies. The Agency proposes holding one meeting per annum in the communities of Kugluktuk, Lutsel K'e, Rae Edzo, N'dilo or Dettah.

2.0 ACTIVITIES

The Agency prepares a Workplan to guide its activities each year. The 1999 – 2000 Workplan described its activities and outputs as follows:

- a) *To provide an integrated approach to achieve the purposes in Article 1.*

At a general level, the activities undertaken by the Agency to pursue this goal include:

- continual or regular review of BHP's environmental management activities and plans as reported by BHP and regulatory authorities;
- analysis of perceived problems to suggest appropriate solutions, and communication of these to appropriate parties (BHP or government agencies);
- regular reporting on progress made, as well as on unresolved issues, to the general public and Aboriginal communities;
- review the activities of regulatory agencies, government interactions with BHP, and BHP's responses;

- publication of an integrated assessment of environmental management activities and performance on an annual basis;
- b) *To serve as a public watchdog of the regulatory process and implementation of this Agreement.*

Activities undertaken by the Agency to pursue this goal include:

- maintaining contacts with regulatory agencies for updates and information, including membership on Inter-agency Coordinating Team;
 - reviewing and commenting on regulatory approvals sought by BHP that relate to environmental matters;
 - reviewing environmental reports produced by regulatory agencies;
 - monitoring progress and facilitating actions taken by DFO in implementing the fish habitat compensation program;
 - commenting on BHP's annual report.
- c) *To compile and analyze available Environmental Quality data, in order to review, report, or make recommendations concerning:*
- i) *the environmental effects monitoring program respecting short-term, long-term and cumulative impacts, carried out by BHP pursuant to this Agreement;*
 - ii) *government compliance reports and BHP self-assessment reports pursuant to Regulatory Instruments and this Agreement;*
 - iii) *Environmental Plans and Programs;*
 - iv) *Annual Reports and Environmental Impact reports;*
 - v) *Monitoring, regulatory and related management programs and activities of Canada and the GNWT; and*
 - vi) *The integration of Traditional Knowledge and experience of the Aboriginal Peoples into Environmental Plans and Programs.*

Activities undertaken by the Agency to fulfill this goal include:

- acquiring relevant documents from public registries (Water Board), government agencies, and BHP;
- review and evaluation of relevant environmental management plans including the Operating Environmental Management Plan, wildlife and aquatic effects monitoring programs, air quality monitoring program, abandonment and restoration plans, wastewater and tailings management plan, ore and waste rock storage management plan;
- review and evaluation of studies conducted in fulfillment of water licence conditions such as the tailings characterization studies, reclamation research program, kimberlite toxicity study, etc.
- review and evaluation of environmental baseline studies conducted for new pipe sampling and development programs;

- review information collected from DIAND and BHP relating to impacts created by on-going exploration activities on the property;
 - monitoring progress of Traditional Knowledge studies funded by BHP and conducted by the aboriginal organizations, and facilitating interaction between the parties on the integration of the studies with BHP's environmental management system.
- d) *To participate as an intervenor in regulatory and other legal processes respecting environmental matters.*

To date the Agency has not engaged in activities related to this mandate provision. In the forthcoming year, regulatory processes relating to expansions and modifications of BHP's mine plan and development configuration are likely to require the Agency's participation. Several new pipes are being proposed for bulk sampling and possible development; regulatory processes for these will include license and lease applications, and environmental review. As exploration activity on the property continues, the Agency's role in the approval of new developments will expand.

- e) *To provide an accessible and public repository of environmental data, studies and reports relevant to the Monitoring Agency's responsibilities.*
- establish and operate a publicly accessible resource library of all materials prepared by BHP, government agencies, the Agency, or other parties regarding the environmental management of the project and related matters; and
 - establish and maintain a website of important documents related to the project and the Agency's activities.
- f) *To provide programs for the effective dissemination of information to the Aboriginal Peoples and the general public on matters pertaining to the Monitoring Agency's mandate.*

To fulfill this goal the Agency provides a public information program pertaining to environmental management at Ekati Mine that includes the following activities:

- publication of an annual report;
- publication of a regular newsletter;
- maintenance of web site with interactive email communication;
- meetings with representatives of the Aboriginal organizations;
- presentations and written reports by individual directors at community meetings and annual assemblies;
- hosting an Annual General Meeting (AGM);
- holding board meetings with open sessions in the Aboriginal communities; and
- presentations at technical or public information sessions.

- g) *To provide an effective means to bring to BHP and governments the concerns of Aboriginal Peoples and the general public about the Project and the monitoring and regulation of the Project.*

Activities undertaken by the Agency to fulfill this goal include:

- production of an annual report which summarizes the concerns identified during the year and, where relevant, makes recommendations about how government or BHP might respond to the concerns;
 - regular meetings with BHP and government agencies where concerns are communicated; and
 - direct correspondence with BHP or government agency as relevant.
 - Community consultations when possible.
- h) *To participate as an intervenor, as appropriate, in the dispute resolution process under this Agreement.*

To date the Agency has not engaged in activities related to this mandate provision, as the dispute resolution process has not been required.

3.0 POLICY STATEMENT

INFORMATION EXCHANGE, COMMUNICATION AND COORDINATION, Approved by Independent Environmental Monitoring Agency Board of Directors, January 11, 1998

Background:

Canada, GNWT and BHP signed an Environmental Agreement on January 6th, 1997, which established the Independent Environmental Monitoring Agency to serve as a public watchdog for environmental management at BHP's Ekati diamond project.

Article IV, Sec.8 of the Environmental Agreement requires the cooperation of Canada, the GNWT and BHP in providing the Independent Environmental Monitoring Agency with such information and assistance that such parties are reasonable able to provide and which is required for the Agency to carry out its mandate.

The Agency's mandate includes the following:

1. to assist in the effective implementation of the Environmental Agreement;
2. to serve as a public watchdog of the regulatory process and the implementation of the Environmental Agreement;
3. to review, report and make recommendations about:
 - environmental effects monitoring program conducted by BHP;
 - government monitoring reports;

- BHP self-assessment reports;
 - BHP's and governments' environmental plans and programs;
 - BHP's annual reports and environmental impact reports (every 3 years);
 - the incorporation of traditional knowledge into environmental plans and programs.
4. to participate as an intervenor in regulatory and other legal processes involving environmental matters, and in dispute resolution under the Environmental Agreement;
 5. to provide an accessible public repository of all environmental information relevant to the project;
 6. to provide ways of distributing information to the Aboriginal peoples and the public;
 7. to provide an effective means to bring the environmental concerns of Aboriginal peoples and the public before BHP and the government.

This policy statement is intended to establish a protocol for how information flow, communication, and coordination between the Agency, BHP, and the relevant regulatory bodies of Canada and the GNWT are to occur. It is obviously desirable that the rules relating to communication between the Agency, BHP, and the regulatory bodies be clear, explicit, effective and responsive to the individual needs of the parties.

Accordingly, the Independent Environmental Monitoring Agency has adopted the following policy in setting out how it will interact with government regulatory bodies (including the NWT Water Board), administrators and BHP (collectively, the parties). The parties affected by it have reviewed the policy and suggested changes have been incorporated.

GENERAL GOALS

1. The Agency shall attempt to ensure that a responsive, pro-active and cooperative approach to communication and exchange of information between the Agency and the parties is in place at all times.
2. The Agency shall remain respectful of the functions and responsibilities of the parties in the conduct of their duties, while at the same time ensuring that its integrity as an independent and public monitoring agency is not compromised.
3. Where a party expresses concerns to the Agency about the procedures by which the Agency conducts its activities, the Agency shall use best efforts to remedy the concerns as long as its ability to perform effectively as an independent and public watchdog is not compromised.

4. Where the Agency is made aware of any misinformation on the public record originating with one of the parties, the Agency shall contact the authoring party prior to taking any steps to correct the record. Similarly, where the Agency is the author of misinformation on the public record, it expects to be contacted prior to another party taking unilateral steps to correct the public record.

INFORMATION FLOW TO THE AGENCY

5. For documents not already in the public realm, the Agency will expect to receive them directly from the party responsible for their preparation.
6. The Agency will expect the parties to provide concurrently copies of all final information (including data, studies, reports, and other material) they generate for another party, or the public, which relates to the Environmental Agreement and the Agency's mandate.
7. The Agency will expect that copies of all inspection reports related to the Class A water license, land leases, and land use permits carried out by the regulatory bodies will be provided to the Agency in a timely fashion.
8. The Agency will expect that copies of all analyses conducted by the regulatory bodies on environmental data submitted from time to time by BHP will be provided to it in a timely fashion.
9. The Agency will expect that DIAND will provide it with copies of all spill reports.
10. Any party may, from time to time, seek the advice of the Agency on matters covered by the Agency's mandate.

INFORMATION FLOW FROM THE AGENCY

11. Upon receipt of written material from a party, the Agency shall review it and respond directly to the sender if a response has been requested or if, in the Agency's determination, a response is otherwise appropriate.
12. Where the material is a copy of information that is before a regulatory body for review, comment or approval, the Agency may conduct a preliminary review of the material to determine if there are significant issues of concern to the Agency. If the Agency determines that there are significant issues arising from its preliminary review, the Agency shall contact the appropriate regulatory body to determine whether such issues will be addressed by that body.
13. If, following such consultation, the Agency determines its issues will not be addressed by another body, the Agency may initiate its own detailed review.

14. Copies of any detailed review undertaken by the Agency will be made available to the appropriate parties at time of completion.
15. If the preliminary review indicates that there are no substantive issues from the Agency's perspective, the Agency shall take no action until the regulatory body has had an appropriate opportunity to respond to the submitted material in accordance with its own procedures.
16. The Agency may then review both sets of materials in order to address its mandate.
17. The Agency may decide to follow up its review with written comments or recommendations to the appropriate body.

PUBLIC REGISTRY

18. All written correspondence, reports, studies, or other material authored by the Agency shall be placed on the public registry at the Agency office and otherwise be made available to the public at a time following five working days from the date of writing.
19. The Agency shall similarly place all final reports, studies, and other relevant written material received by the Agency from a party on the public registry at a time following five working days from the date of receipt.
20. Notwithstanding the above, a party may at its discretion request that specific information it is making available to the Agency not be placed on the public registry for a specified period of time. In such instances, the Agency will either comply with the request or, if deemed more appropriate, immediately return the material to the authoring body.

4.0 MANDATE

The Agency's mandate is set out in Article IV.2 of the *Agreement*, as follows:

- (a) to provide an integrated approach to achieve the purposes in Article I;
- (b) to serve as a public watchdog of the regulatory process and the implementation of the *Agreement*;
- (c) to compile and analyze available relevant environmental quality data, in order to review, report, or make recommendations concerning:
 - (i) the environmental effects monitoring program respecting short-term, long-term and cumulative impacts, carried out by BHP pursuant to the *Agreement*;
 - (ii) government compliance monitoring reports and BHP self-assessment reports pursuant to Regulatory Instruments and the *Agreement*;
 - (iii) Environmental Plans and Programs;
 - (iv) Annual Reports and Environmental Impact Reports;
 - (v) monitoring, regulatory and related management programs and activities of Canada and the GNWT; and
 - (vi) the integration of Traditional Knowledge and experience of Aboriginal Peoples into environmental plans and programs;
- (d) to participate as an intervenor in regulatory and other legal processes respecting environmental matters;
- (e) to provide an accessible and public repository of environmental data, studies and reports relevant to the Agency's responsibilities;
- (f) to provide programs for the effective dissemination of information to Aboriginal Peoples and the general public on matters pertaining to the Agency's mandate;
- (g) to provide an effective means to bring to BHP and governments the concerns of Aboriginal Peoples and the general public about the Project and the monitoring and regulation of the Project; and
- (h) to participate as an intervenor, as appropriate, in the dispute resolution process under the *Agreement*.

5.0 PURPOSES

The *Environmental Agreement* was signed to achieve five purposes (Article I of the *Agreement*):

- (a) to respect and protect land, water and wildlife and the land-based economy, essential to the way of life and well-being of the Aboriginal Peoples;
- (b) to facilitate the use of holistic and ecosystem-based approaches for the management and regulation of the Project;
- (c) to provide advice to BHP to assist BHP in managing the Project consistent with these purposes;
- (d) to maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project; and
- (e) to facilitate effective participation of the Aboriginal Peoples and the general public in the achievement of the above purposes.

APPENDIX D

EVALUATION TEAM

THE EVALUATION TEAM

The **Macleod Institute for Environmental Analysis** is an independent institution. Since its inception in 1995, the Institute has established a reputation among industry, government and NGOs for policy development, impartial analysis and strategic counsel. Its primary focus is environmental and regulatory issues.

Multidisciplinary teams of Macleod Institute associates are carefully chosen to meet the requirements of individual projects. These independent associates have achieved expertise in fields that encompass the environmental sciences and regulatory and environmental policy. The breadth of experience and professionalism among its associates enables the Macleod Institute to provide clients with balanced, third party advice and counsel.

Thom Stubbs, MA

Evaluation Team Leader

Responsibility: Overall evaluation implementation

Mr. Stubbs has moved through a series of progressively more challenging assignments, particularly with the Government of Yukon: developing strategic regional and resource policy frameworks; facilitating development agreements between companies, communities and First Nations; leading strategic management change and planning; developing and evaluating regional development programs; representing government at project assessments and board reviews and managing program and research functions of government at progressively senior levels. He is known for his ability to bring together different resource interests and help lead a strategic or policy framework and accompanying plan of action.

Mr. Stubbs is a founding director of both the Yukon Evaluation Society and the Canadian Institute of Forestry, Yukon Chapter and a member of the Alberta Arbitration and Mediation Institute. He has taught college level courses in program development and evaluation and has lectured on natural resources issues. Mr. Stubbs facilitates workshops and professional development forums, aiming to increase the ability of public servants, local organizations and communities to effectively manage their activities. He has facilitated workshops for national and international organizations, including the National Round Table on Environment and Economy and the Circumpolar Ministers Conference on Sustainable Development. The Yukon's Government Leader appointed Mr. Stubbs to establish and run the Yukon Forest Commission in 1996, seeing it to completion in late 1998. The Commission led a consensus based process with First Nations, an independent advisory committee and technical teams to develop a new vision and management approach for Yukon forests.

Elaine McCoy, QC

Evaluation Team Member

Responsibility: evaluation design, interviews and analysis of policy and public interest roles

Ms. McCoy is President of the Macleod Institute. A lawyer and former Alberta cabinet minister, Ms. McCoy has 30 years experience in regulation and policy development in the private and public sectors. As co-chair of the Alberta Economic Development Authority's Climate Change Task Force, and co-chair of the Climate Change Round Table, she took a leadership role in preparing recommendations for the Government of Alberta, which Cabinet adopted as the basis for Alberta's Climate Change Strategy. Ms. McCoy is currently vice-chair of Climate Change Central, a multi-stakeholder organization formed to co-ordinate greenhouse gas emission reduction activities across the province.

Ms. McCoy recently participated in an assessment of the Diavik Comprehensive Study Report for the Canadian Arctic Resources Committee. She acted as project leader in a review and analysis of the Yukon's proposed environmental assessment legislation for the Territorial Government's Development Assessment Process Commission, and has led the Institute's team in a number of peer reviews, including an evaluation of Syncrude Canada's Aurora Mine environmental impact assessment and an assessment of the Town of Cochrane's environmental management system. For Alberta Environmental Protection, Ms. McCoy developed a model to predict the cost of regulatory delay, was chief analyst in preparing lab accreditation recommendations and co-authored reports on cumulative effects and biotechnology. She has facilitated group sessions focussing on a wide range of topics, including scientific and technical aspects of PCB waste management, and regulatory/stakeholder requirements for pipeline rights of way.

Among other achievements, Ms. McCoy pioneered and led the Alberta government in the use of business plans; implemented the use of delegated regulatory organizations in Alberta; and chaired the Alberta Economic Development Authority's (AEDA) Right-to-Work Study, producing a unanimous report from a committee comprised of business, labour and government representatives. Ms. McCoy practised law as Senior Legal Counsel with the Alberta Public Utilities Board and led multi-disciplinary rate case teams before regulatory tribunals. She is a member of the Board of Governors, Alberta Foundation for Environmental Excellence.

Allan Legge, PhD

Evaluation Team Member

Responsibility: evaluation design, interviews and analysis of environmental quality data monitoring role

Dr. Legge has served on many provincial, national and international scientific peer review and advisory committees, including committees established by Forestry Canada, The Royal Society of Canada, Tri-Council Eco-Research Program, BC Science Council, Academy of Finland, the US Environmental Protection Agency (Clean Air Science Advisory Committee, Science Advisory Board), and the United Nations Environment

Program. He was science advisor to the Alberta Energy and Utilities Board in 1997-1998. Dr. Legge is a member of the US National Research Council Committee to Assess North American Research Strategy on Tropospheric Ozone (NARSTO). He was appointed Chair of the Science Advisory Board (SAB) to the Terrestrial Environmental Effects Monitoring Committee of the Wood Buffalo Environment Association in 1998. He also has actively worked with government, industry and the public to communicate environmental knowledge and understanding, not only in the form of the results/implications of environmental research but also in terms of issues and policies for the future.

Dr. Legge is active in a number of professional organizations such as the Air and Waste Management Association, the International Air Pollution Workshop and the Alberta Society of Professional Biologists. He was a Founding member of the Canadian Prairie and Northern Section of the Air and Waste Management Association and has served as a Director. Dr. Legge has received the Peggy Thompson award for scientific excellence, given by the Alberta Society of Professional Biologists, in 1987, 1991, and 1995. He was elected as a Fellow of the American Association for the Advancement of Science in 1992.