



INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

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June 17th, 2005

Bob Wooley
Executive Director
Mackenzie Valley Land and Water Board
PO Box 2130
Yellowknife NT
X1A 2P6

Dear Mr. Wooley

Re: Draft 3 of Water Licence MV2003L2-0013

Thank you for the opportunity to comment on Draft 3 of water licence MV2003L2-0013 for the Ekati diamond mine as received May 28th, 2005. The Independent Environmental Monitoring Agency earlier submitted comments on several issues contained in Draft 1 and 2 of the above licence. Those comments and recommendations should still be considered by the Board in its deliberations to finalize the new licence. Our comments on Draft 3 are presented in order of importance.

Major Issue—Reclamation and Closure

The proposed draft would see virtually all of the requirements for the content of the Abandonment and Reclamation Plan (now called Reclamation and Closure Plan or R&C Plan) removed. This list has now been replaced by a requirement for a revised Plan to be prepared by BHPB, guided by a Terms of Reference (TOR) to be first issued by the Board, with the Plan submission due a year from that date. While the process for developing the TOR is not specified in the draft licence, we support the use of an open process to create solid terms of reference for an R&C Plan.

We strongly recommend keeping the original wording for the content of the Plan, until such time as a new set of requirements emerges through the Board process. We propose new wording below which also gives the Board the future flexibility to easily replace or amend the listed contents of the Plan when required.



We have several reasons for maintaining the content requirements for an R&C Plan as contained in the current licence. We are not aware of any submissions to amend or delete the content requirement. This list was developed through extensive discussion amongst all the affected parties including the Aboriginal organizations, in 1996-1997 during the formulation of the original licence. The list provides some basic guidance and should form a starting point for any future R&C Plan.

In our view the closure requirements as specified in Draft 3 of the licence are too vague and represent a significant step backwards in ensuring adequate closure at Ekati. This is particularly evident due to the removal of substantive and detailed closure requirements including several conditions yet to be met by the company (e.g. submission of a reclamation research plan).

Maintaining the details in the new licence would still allow the Board's future TOR process to be carried out. We note the difficulty of incorporating the requirement for a Board-driven working group process to develop a TOR into the new licence. While we understand the concept of a working group and a TOR to help guide the preparation of an Interim R&C Plan, clear written direction as to how this process is to work will need to be provided by the Board at the earliest opportunity.

Finally, if the proposed working group cannot achieve a consensus on the TOR, we note the Board's commitment to hold a public hearing on the Interim R&C Plan, as stated in its letter to stakeholders dated March 2, 2005. This gives credibility to the process for creating a good R&C Plan.

The following wording for Part J of the new licence is suggested by the Agency:

PART J: CONDITIONS APPLYING TO CLOSURE AND RECLAMATION

1. The licensee shall have in place at all times an approved Interim Reclamation and Closure Plan that conforms to the NWT Water Board's "Guidelines for Abandonment and Restoration Planning for Mines in the Northwest Territories, September 1990" and shall contain, unless otherwise directed by the Board, the following additional elements to address reclamation and closure concerns:
 - a) specific abandonment and reclamation objectives for each mine component which shall include, but not limited to the following:

[Maintain the provisions listed in the current licence, N7L2-1616, from Part K 2 a) to Part K.5 inclusive as new sections 1 b) to 4. These are the same as the deleted sections in Draft 3 Part J.2 a) to Part J.5 in Draft 3 of the licence.]

(Explanation: The proposed new wording above (underlined) provides flexibility to the board to change the list of detailed provisions under Item 1 a) to 1 m) should it be

required in the future as, for instance, by the development of a new TOR for the R&C Plan.)

5. The Licensee shall review the approved Interim Closure and Reclamation Plan annually, and shall amend the Plan as necessary to reflect changes in operations, technology, and results from reclamation research and other studies. All proposed amendments to the Plan shall be submitted to the Board for approval.

(Explanation: Maintain the proposed wording for Section 2 from Draft 3.)

6. The **Licensee** shall revise the plan(s) referred to in this section as required by the **Board**. Revisions to the plan(s) shall be submitted to the **Board** for its approval within three (3) months of receiving notification of the **Board's** requirement for revision, or as otherwise directed.”

(Explanation: In Section 3 in Draft 3, delete clause “in its review of the plans”. The Agency rationale is to enable the Board to require a revision of the R&C Plan at any time as may be required, not just during its review of a submitted revised Plan. It also allows for a longer period for BHPB to respond if the changes, as directed by the Board, are substantive. There may also be future changes at Ekati where the Board may wish to retain the flexibility to initiate amendments to the R&C Plan of its own accord.)

7. The **Licensee** shall implement the Interim Closure and Reclamation Plan as approved by the **Board** in accordance with the schedules and procedures specified in the plan(s) and endeavour to carry out progressive reclamation of areas as soon as is reasonably practicable.
8. A minimum of twenty-four (24) months prior to mine closure, the Licensee shall submit to the Board for approval a Final Closure and Reclamation Plan.

(Explanation: Sections 4 and 5 as proposed in Draft 3 –no change)

9. The **Licensee** shall submit to the **Board** for approval an updated Interim Closure and Reclamation Plan within one year of receiving an approved Terms of Reference for an Interim Closure and Reclamation Plan from the **Board**.

(Explanation: Reinsert Section 1 in Draft 3 for a more logical ordering of requirements.)

Secondary Issues

PART A: SCOPE AND DEFINITIONS

Precautionary Principle

Add Section d) to Part A.1 as follows:

- d) The Licensee shall take every precaution to protect the environment and shall apply the Precautionary Principle in all its environmental management activities.

(Explanation: As stated in previous Agency submissions, we believe that there should be an additional clause in the scope section of the licence to require the application of the Precautionary Principle similar to the wording in the M2002L2-0008 licence.)

PART B: GENERAL CONDITIONS

Term of Licence

As we have previously recommended, it would be appropriate to set the term of the new licence to expire simultaneously with the Sable Pigeon Beartooth licence, so that the two licences could be merged for the duration of mine life. Of prime importance, is the need to have a relevant, comprehensive and publicly supportable and approved R&C Plan in place prior to mine closure.

PART F: CONDITIONS APPLYING TO WASTE DISPOSAL

Wastewater and Processed Kimberlite Management Plan

Add Section (viii) to Section 1 a) to read as follows:

- (viii) A clear explanation of how the components of the Long Lake Containment Facility will be decommissioned, reclaimed and closed at the end of mining.

(Explanation: It is important to add this condition since BHPB is in the process of significantly redesigning its tailings disposal operation in Long Lake, and will be seeking approval for a revised management Plan in the near future. Approval of a new or revised management plan under the licence should also be accompanied by an assurance that the licensee has a conceptually viable method of closure.)

Effluent Quality Requirements

In our presentation at the public hearing in 2004 we stated that site-specific water quality objectives should be established for Long Lake discharge (July 7, 2004 transcript page 125-126). However those limits are developed, they ought to reflect the need to be able to meet CCME guidelines to protect aquatic life in the downstream receiving environment. We believe that the Board should review the effluent quality requirements using this approach.

PART H: CONDITIONS APPLYING TO CONTINGENCY PLANNING

Adaptive Management Plan

Section H.8 of Draft 3 sets out a requirement for an ‘adaptive management plan’ for developing thresholds and management responses for certain water chemistry parameters. We support this approach for unregulated parameters. It is important, however, that this must not be confused with the principle of adaptive environmental management for the entire mine to which BHPB committed and on which approval for the project was based. A more appropriate title should be provided, such as ‘water chemistry threshold study’ or ‘water chemistry management plan’. The thresholds set through this process should be tied to ecological effects and to ensure the protection of aquatic life in the receiving environment.

PART I: CONDITIONS APPLYING TO AQUATIC EFFECTS MONITORING

Annual Collaborative Review of the Aquatic Effects Monitoring Program Results

The Agency has previously recommended that there be an annual collaborative review or workshop on the AEMP as a licence requirement. We continue to hold this position, and urge a new Section I.6 f) to require an annual collaborative review of the AEMP results.

Aquatic Effects Monitoring Program

The new draft has deleted the requirement contained in I.3 a) (iv) for the monitoring of the “structure, abundance and productivity” for various aquatic life forms. The Agency view is that this type of analysis is essential to understanding changes to aquatic communities in water bodies downstream of the tailings containment facility and must remain in the licence.

PART J: CONDITIONS APPLYING TO CLOSURE AND RECLAMATION

Progressive Reclamation

The requirement in J.4 of the draft licence for the company to conduct progressive reclamation makes no explicit mention that the achievement of progressive reclamation targets could trigger a reduction in the amount of security held. In the absence of such results tied to targets and clear closure criteria, it will be difficult to provide an accurate liability estimate as required under the new wording in B.5 through which BHPB may apply to the Board for a reduction in security. We believe it is very important to provide strong appropriate financial incentives for BHPB to reduce closure liabilities at the mine site. Explicit encouragement of progressive reclamation is one such mechanism.

Other Comments

- pp. 10 (C.2) should clearly indicate that the water use figures specified are annual maximum amounts;
- pp. 15 'amended' is not spelled correctly;
- pp. 17 (F.8 a) (vi)) it is not clear how the requirement to contain the solids fraction in LLCF would apply to any dust that may be blown off the surface; and
- pp. 26 (I.3 c) (iv)) 'Lac de Gras' should read 'Lac du Sauvage'.

Thank you for the opportunity to provide comment on Draft 3 of licence MV2003L2-0013. We look forward to the completion on this important licence. For further clarification on anything in this submission, please contact us through our office.

Sincerely,

-ORIGINAL SIGNED BY-

William A. Ross
Chairperson

cc. Society Members