



***INDEPENDENT ENVIRONMENTAL MONITORING AGENCY***

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May 4<sup>th</sup>, 2005

Honourable Michael Miltenberger  
Minister of Environment and Natural Resources  
Government of the Northwest Territories  
Box 1320  
Yellowknife NT X1A 2L9

Bob Overvold  
Regional Director General  
Department of Indian Affairs and Northern Development  
Box 1500  
Yellowknife NT X1A 2R3

Wayne Isaacs  
President and Chief Operating Officer  
BHP Billiton Diamonds Inc.  
#1102 4920-52<sup>nd</sup> Street  
Yellowknife NT X1A 3T1

Dear Gentlemen

**Re: Dispute Resolution Process for IEMA Core Budget and Work Plan for 2005-7**

We are in receipt of a copy of the letter sent by Mr. Isaacs to GNWT and DIAND on the core budget and work plan for 2005-7 for our Agency dated March 21, 2005, and a letter from Mr. Overvold to Mr. Isaacs dated April 25, 2005. While we expected to negotiate a final budget and work plan with BHPB and to discuss budget and work plan further, we respect BHPB's decision to enter into the formal dispute resolution process provided for in the Environmental Agreement.

Please consider this letter as our attempt to suggest the key issues as we see them for the dispute resolution process. The Agency supports any efforts towards a timely mediation and/or arbitration settlement. We would suggest that there are three key issues that require a decision:

1. The additional funding request by the Agency for \$30k and the increases proposed for 2005-7.
2. The binding nature of a work plan by the Agency in terms of activities and expenditures.
3. Interpretation of the mandate of the Agency and its independence.



**Additional funding request for \$30k and increases in the 2005-7 core budget.**

As was described in detail in our letter of February 25, 2005 to BHPB, the Agency understood that we had a commitment from BHPB to fund an additional request for \$30k in the fourth quarter of 2004-5. This came about after BHPB deducted some \$28k from its payment to the Agency and we invoked the dispute resolution process.

We have attached the relevant correspondence related to the additional funding request by the Agency. It remains our position that the activities we have undertaken in 2004-5 were fully within our mandate and that the additional funding request was proper.

On the issue of an 18% increase in the 2005-7 core budget submission, it is our view this reflects an increased workload for our Agency as a result of the significant changes in the mining operation and regulatory processes. This includes underground operations and further incremental expansion of the mine; changes to key operations such as the waste rock management plan, Long Lake Containment Facility, and other mine components; and an increase in regulatory activities such as the lengthy water licensing, further changes to the water licence as suggested by BHPB, and the review and approval of an Abandonment and Restoration Plan. The Agency has also been directed by our Aboriginal society members and by others (e.g., at our annual general meetings for many years) to increase our community consultation activities. While cost reductions compared to our submitted budget and work plan, may be possible, one or more of the activities described in our work plan would need to be reduced in scope. The Agency, of course, will respectfully adjust its work to reflect whatever decision is reached.

**Binding nature of a work plan by the Agency in terms of activities and expenditures.**

The Agency has no difficulty accepting a budget that has been negotiated with BHPB *and managing our resources accordingly as we have in all past budgets since we were formed.* The work plan that accompanies a budget must be flexible enough to allow the Agency to fulfill its broad mandate under the Environmental Agreement. Indeed, this flexibility in our work plan is essential as the mine plan and BHPB's environmental management system evolve and change.

As long as the activities undertaken by the Agency continue to be consistent with the purpose of the Environmental Agreement and our mandate, a work plan should be viewed as a planning document that is subject to changes, often necessitated by changes to BHPB's mining operations and environmental management system, and regulatory processes. Our views on necessary changes to our work plan are also spelled out in the letter of February 25, 2005 referred to above. We believe flexibility is essential and controls over the Agency are to be exercised by our Society, and not by the Company.

Flexibility is even more important given that the Agency is trying to forecast two years into the future with the current proposal. It is also important to understand that the proposed two-year core Agency budget for 2005-7 was a zero-based approach with a detailed work plan, much more detailed than previous submissions.

As a matter of principle, we need to revise the work plan submitted. To it should be added the following item: “such other reasonable activities as are necessary for the Agency to carry out its mandate. These may arise because of changes in environmental management operations at the Mine.”

### **Interpretation of the mandate of the Agency and its independence.**

It is our view that the activities of our Agency have always been fully within our mandate, a view supported by our auditors over the years as confirmed by our satisfactory financial statements. Should there be any effort to redefine the mandate of our Agency, this would likely involve opening up the Environmental Agreement to the parties and the Aboriginal Peoples (as defined under the Agreement). The Agency, of course, is not a signatory to the Environmental Agreement and, as such, would not be a party to such negotiations. If requested, we would be pleased to offer observations or recommendations.

It is necessary to mention a few other matters with regard to a mediation and/or arbitration process. It is our hope that it will be conducted in a timely fashion so as not to take away from our ability to carry out our usual activities. It would be our wish that we could agree on the fundamentals of the process including a timeframe (and choice of a mediator or arbitrator, if appropriate) at a first meeting to be held some time soon. We note the names suggested by DIAND as potential mediators and have no objection to any of these individuals.

We are not in a position at this point to determine the need for any outside expertise but this may be clarified at the initial meeting. We would request that at least one of our Directors be directly involved in any meetings and that our travel and honoraria costs would be reimbursed. Should the process become more formalized, such as a binding arbitration, the Agency may need to reassess our need for legal or technical advice.

In closing, we wish to make it very clear that the goal of the Agency Directors is to make this Environmental Agreement and environmental management at Ekati a success story. We view the use of environmental agreements and monitoring agencies as a productive and correct approach to better environmental management in the North. We very much wish to spend less time and effort on dispute resolution and more on working cooperatively with all the parties and our Aboriginal society members to make sure this happens.

Sincerely,

-Original Signed By-

William A. Ross  
Chairperson

cc. David Livingstone, Director, Environment and Conservation, DIAND  
Gavin More, Environment and Natural Resources, GNWT  
Chris Hanks, BHP Billion Diamonds Inc.

Attachments: letters of date and 2005-7 IEMA budget and work plan