

*3rd Environmental Agreement Implementation Meeting
Yellowknife, NWT
May 24, 2007
Summary of Discussion*

Revised: June 26, 2007

Participants

Tim Byers, Independent Environmental Monitoring Agency
David Livingstone, Department of Indian Affairs and Northern Development
Gavin More, Government of the Northwest Territories
Kevin O'Reilly, Independent Environmental Monitoring Agency
Bill Ross, Independent Environmental Monitoring Agency
David Scott, BHP Billiton Diamonds
Lorraine Seale, Department of Indian Affairs and Northern Development
Laura Tyler, BHP Billiton Diamonds

1. *Selection of Chairperson*

David Scott volunteered to serve as the chairperson for the meeting.

2. *Minutes*

Laura Tyler raised a concern about the summary of the January 31, 2007 meeting. The BHPB staff present at the meeting could not recall a discussion of Agency work with EMAB and SLEMA on a comparative review of caribou monitoring programs. Bill Ross noted that the summary does not state that there was a discussion but that there have been discussions amongst the monitoring bodies on this potential work. Kevin O'Reilly checked his notes from the meeting and read out the applicable reference to this matter in the Agency's presentation on January 31, 2007. David Scott also mentioned that BHPB would like to see financial reporting by the Agency using expenses, not just by categories of activities. No changes to the summary of the January 31, 2007 meeting were proposed and it was adopted by consensus.

3. *Review of Purpose of the Meeting*

The purpose of the meeting as set out in the Resolution Agreement was reviewed. David Livingstone said that there is a perception of mixed messages and that the signatories to the Environmental Agreement and the Agency should be working together better. Bill Ross mentioned that there is a need to better coordinate our activities, including meetings together in communities. Gavin More stated that GNWT would be concentrating some of its efforts on caribou over the next while but that GNWT would be willing to have someone go to community or other meetings if requested.

4. Agency Presentation on Communications Responsibilities

Bill Ross gave a PowerPoint presentation on the Agency's communications responsibilities. Copies of the presentation were distributed to those in attendance.

Laura Tyler asked whether the Agency experiences any communication problems with the current arrangement with BHPB. Bill Ross mentioned that the company generally copied the Agency on its regulatory submissions although letters requesting the approval of the DIAND inspector do not appear to have been copied to the Agency for about the last year or more. Kevin O'Reilly mentioned that these sort of letters were previously copied directly to the Agency in the past, citing examples of the request for an on-land sump for drilling of the Jay pipe and a request for approval to construct the road to Cell A. BHPB staff agreed to see whether such correspondence could be copied to the Agency in the future.

Bill Ross reminded those present of the communications protocol for the Agency where the signatories agreed to provide information to the Agency in a timely fashion and that everything the Agency receives is public unless otherwise agreed up front. There was some discussion of a letter received from BHPB that dealt with a caribou that became ensnared in guy wires at the mine site. The Agency was of the view that there was some potential benefit in providing this type of information to communities to show how the company acted in a responsible and timely fashion to free the animal. BHPB staff were of the view that this type of communication needs to be handled in person and that it could be potentially damaging to the company's interests.

Tim Byers mentioned that it was not possible for him as a Director to arrange a visit to Lutsel K'e in 2006-7. This was largely due to the pressures on the community from other resource development. Gavin More asked about consultations with the Yellowknives Dene First Nation. Tim Byers replied that there were no meetings but verbal and written briefings were provided to Rachel Crapeau of the Wildlife and Lands Committee. Laura Tyler mentioned that BHPB was not able to meet directly with the Yellowknives either during the Interim Closure and Reclamation Plan development process, even though BHPB was willing to change its approach. Bill Ross recounted the Agency's recent attempts to consult the Yellowknives including a Board meeting in Dettah in September 2005 and Laurence Goulet's presence at a recent Board meeting.

5. BHPB Presentation on Communications Responsibilities

Laura Tyler gave a PowerPoint on BHPB's reporting requirements and community engagement. David Scott noted that it may take BHPB about five years to get the ICRP approved and further updates are required on a three-year cycle. BHPB is planning to present details on the Sable, Pigeon and Beartooth water licence application to communities in August 2007 and then a site visit in September 2007 for up to six representatives of each Aboriginal organization. BHPB understands that the NSMA

would like the site visit first and this will be accommodated. BHPB is developing an internal consultation strategy.

It was confirmed that Eric Denholm will start with BHPB some time over the summer as a replacement for Jane Howe. Brent Murphy is taking another job with a gold mine in Alaska at the beginning of July.

David Livingstone mentioned that DIAND has no plans for community consultations related to the Ekati mine. Gavin More stated that GNWT may be conducting some community work on caribou but he needs to confirm with other ENR staff. He mentioned that it may be useful for a GNWT staff person to be present at the mine site during the elder visits in case anything comes up related to government research or responsibilities.

6. Agency Presentation on 2006-7 Annual Report Recommendations

Bill Ross gave a PowerPoint presentation on the Agency's proposed recommendations from its 2006-7 Annual Report. On the first recommendation on caribou monitoring, Gavin More suggested that some thought be given as to whether the Aboriginal governments and/or co-management bodies might be included, and what is meant by "greater efforts". Bill Ross responded that it is unclear whether the Agency can make recommendations to the Government of Nunavut, but the Agency has done this in the past. He also offered to have Kim Poole provide more details, such as the expected content in our Annual report, regarding this recommendation with GNWT staff.

With regard to the second and third recommendations on the Interim Closure and Reclamation Plan, Laura Tyler mentioned that BHPB has already committed to carry out development of component-specific objectives and criteria, and to link this with the Reclamation Research Plan. Bill Ross acknowledged and appreciated BHPB's flexibility on these matters and observed that the cut-off date for the Agency's Annual Report is really March 31 and that these matters would be reported on in its next Annual Report.

On the fourth recommendation concerning a deadline for annual monitoring reports from BHPB, Bill Ross noted that it was increasingly difficult for the Agency to produce its own Annual Report and to review BHPB's Annual Report under the Environmental Agreement without having the monitoring reports in hand. The Agency is sensitive to the regulatory load for BHPB and has suggested that the company should focus on what is important and that the environmental workshops in the past had offered an ideal opportunity to help sort out what is important and to get agreement on those matters.

The BHPB, GNWT and DIAND representatives undertook to respond to the Agency recommendations by June 15, 2007 so as to allow the responses to be incorporated into the Agency's 2006-7 Annual Report.

7. Matters Under Dispute

Laura Tyler stated that the first matter regarding the Agency's ability to solicit and receive outside funding was resolved from BHPB's perspective as a result of further discussions and reflection. Bill Ross mentioned that it is much the same for the Agency except that the Agency does not see the need to seek approval of the Environmental Agreement signatories but is more than willing to provide early notice for 'good citizen' matters.

BHPB's position is that 'good citizen' matters should not involve a significant amount of time or funding, and that prior approval is preferable. David Livingstone stated that his preference was to keep things informal. Communications is key to working together and there needs to be a level of comfort and trust with each other. DIAND is fine with notice if it is provided responsibly and early. If there are any concerns, they can be raised in a reasonable timeframe with early notice. BHPB staff then agreed with this position and stated that there is no anticipation of a problem if the 'good citizen' role is not abused.

Bill Ross stated that outside funding for other matters was still not resolved. He suggested that the Agency would make a request for such funding. If BHP Billiton agreed to fund it, or if the signatories determined that BHPB should fund it, that was that. If BHPB declined to fund the request and if the signatories agreed that BHPB need not fund it, they would determine whether outside funding should be permitted and so advise the Agency. If the Environmental Agreement signatories say 'no' to outside funding, then the Agency would likely not pursue the matter. The Agency can apply for additional funding and would expect to hear back from the Environmental Agreement signatories about the desirability of the work, whether it is within the Agency's mandate and whether outside funding would be provided. No objections were raised with this process.

On the second matter under dispute, the allocation of expenses to the Separate Fund, it was agreed that Bill Tilleman should be brought in to mediate. David Livingstone noted that it would be helpful to get some clarity on definitions and that DIAND will initiate contact with Bill Tilleman and invoke the mediation provisions in the Environmental Agreement. David Scott stated that BHPB was willing to accept mediation in this instance as the proper steps had been taken to attempt to resolve the dispute, pursuant to the Environmental Agreement.

8. Other Business

Bill Ross mentioned that although he may have mentioned to the company on a previous occasion that the Agency would incur a large surplus for 2006-7, this was no longer the case. A small surplus would be returned due to a change in interpretation of tax and Canada Pension Plan (CPP) treatment of the Agency Directors. The Canada Revenue Agency reassessed the Agency for 2004-6 for CPP contributions and that their expenses would be sourced to the 2006-7 financial year as approved by the Agency's auditors.

The next meeting was set for January 24 or 31, 2008.

David Scott mentioned BHPB's desire to see a presentation of Agency expenditures by expense type rather than just by activity. The Agency undertook to see if this might be possible.