



INDEPENDENT ENVIRONMENTAL MONITORING AGENCY

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April 18, 2006

Sarah Baines
Regulatory Officer
Wek'eezhii Land and Water Board
P.O. Box 2130
Yellowknife NT X1A 3P6

Dear Ms. Baines

Re: Revised Terms of Reference for the Ekati Interim Closure and Reclamation Plan

Please accept this letter as the Agency's comments on BHP Billiton's revised terms of reference (TOR) for its Interim Closure and Reclamation Plan (ICRP).

The Agency would like to compliment you for the excellent job in chairing the March 23, 2006 Working Group meeting. The Agency was also pleased with the constructive tone of the meeting and BHPB's willingness to discuss, and often, to change the TOR based on the technical concerns raised.

The Agency has identified the following areas as ones that still require some attention as indicated below by the tracking number on the tables sent out on April 10, 2006:

Tracking Number 23—Winter Road—Although the BHPB response indicates that the “use of the winter road will be considered in the risk assessment” the real issue here is the uncertainty over the continuing availability of the ice road for closure and any possible remediation measures. The ICRP should address how closure will be carried out in the absence of or with limited availability of the winter road.

Tracking Number 31—Integrated Approach to Reclamation Planning—Although this matter is beyond the jurisdiction of the Board, the Agency is suggesting that DIAND provide written assurance that one integrated plan shall be sufficient for the purposes of the Environmental Agreement and any land leases that may cover the project activities.

Tracking Number 40—Proponent Overview—During the discussion at the Working Group on March 23, we understood that BHPB would also include any lessons learned from other northern mine closures and reclamation. We would suggest that the proposed wording for section 4.7 be amended by adding the following words at the end, “and from other northern mines.”



Tracking Issue 92—Expected Cost of Closure and Reclamation—We remain puzzled by BHPB's insistence on the claim that there is no mechanism for adjusting the amount of reclamation security deposit. The Agency believes the regular revisions to the necessary amount of the reclamation security deposit found in both the water licence and the Environmental Agreement provide the necessary mechanism. The argument BHPB provides in its cover letter would suggest there is no mechanism either to reduce or to increase the security deposit. But the amount of the security deposit has indeed been increasing. We believe that what exists is possible and therefore conclude that the adjustment mechanism works. However, even if we thought the claim about an inability to reduce the amount of security deposit were true, we do not understand why it would be in the terms of reference for the ICRP. If the WLWB determines it should be in the terms of reference, the Agency will construe it to mean that BHPB, in consultation with DIAND, should include in the proposed ICRP a specific mechanism for applying the closure criteria and, based on the results, to determine appropriate revisions to the necessary amount of security.

The Agency recently sent a letter dated March 31, 2006 to the company (and subsequently copied to the WLWB) where suggestions were offered to BHPB with regard to its consultation approach while developing the ICRP, key considerations for closure and reclamation at Ekati, and some specific advice on closure of selected mine components. The Agency remains hopeful that BHPB will respond in a timely fashion and incorporate many of these suggestions. The Agency is committed to working with BHPB and all interested parties to develop a sound and sensible ICRP that enjoys widespread support.

Sincerely,

Bill Ross
Chairperson

cc. Society Members