



Independent Environmental Monitoring Agency

P.O. Box 1192, Yellowknife, NT X1A 2N8 • Phone (867) 669 9141 • Fax (867) 669 9145
Website: www.monitoringagency.net • Email: monitor1@yk.com

October 9, 2008

Florence Catholique
Wildlife, Lands and Environment Department
P.O. Box 28
Lutsel K'e NT
X0E 1A0

Re: September 11-12, 2008 Agency Visit to Lutsel K'e

Dear Ms. Catholique

The Agency would like to thank you and the Wildlife, Lands and Environment Committee Staff for your assistance with our recent visit to Lutsel K'e. We were quite impressed with the hospitality shown to our Directors and staff. We were pleased to discuss our work and general environmental performance of the Ekati mine with you and other community members and also to hear of the community concerns. We trust that it was a helpful visit for you and your colleagues as it was for the Agency.

One of the responsibilities of the Agency is to "bring to BHPB and the governments the concerns of Aboriginal Peoples" about the Ekati mine. We have noted in the attachment the concerns that were raised during our visit and have copied both BHPB and the two governments on this letter and we encourage them to respond appropriately. The Agency will respond to the concerns we committed to at the meeting. We will continue to work away at many of these issues over the months to come. In particular, we will be discussing the community's concerns with governments when we meet with them.

One issue that the Agency needs to respond to immediately in writing, is your request for \$30,000 from our core funding. Although we have sympathy and a better understanding following our visit, of the capacity and financial needs of your community and the Wildlife, Lands and Environment Committee in particular, the Agency cannot provide direct funding. There are no provisions in the Environmental Agreement or the by-laws that we operate under, to provide direct funding to communities. While we understand that our sister agencies that deal with the Diavik and Snap Lake mines do provide such funding, our mandate is different and we cannot do so.

What the Agency can offer and has offered in the past, and those offers have been taken up by Lutsel K'e, is to do the following:

- Attempt to circulate Agency correspondence in advance of regulatory deadlines on significant matters such as licence renewals, reports and studies for approval of

regulatory bodies, and other matters, thus allowing communities to see our analysis before the deadline (this was requested by one of our Aboriginal Society members);

- Visit communities with Directors or staff to assist in a better understanding of environmental issues at Ekati, while recognizing that other communities may wish the same sort of support and that travel and meeting expenses must be reasonable;
- Invite community representatives to Agency sponsored events including our Annual General Meeting and Environmental Workshops to present and discuss monitoring program results (when BHPB does not hold such events), or other special workshops or meetings. The Agency will continue to cover reasonable travel expenses and honoraria requests;
- Make Directors and staff available by phone and e-mail to discuss and assist whenever possible with environmental issues and concerns at Ekati;
- Encourage communities to meet with BHPB and/or governments; and
- Bring the concerns and issues of communities to BHPB and government.

We look forward to continuing to work together with your community in the interest of improved environmental performance at the Ekati mine.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Ross".

Bill Ross
Chairperson

cc. Laura Tyler, BHP Billiton Diamonds
David Livingstone, DIAND
Gavin More, Environment and Natural Resources, GNWT
Aboriginal Society members

Concerns and Issues Raised During the September 11-12, 2008 Visit to Lutsel K'e by the Independent Environmental Monitoring Agency

*Meeting with Lutsel K'e Wildlife, Lands and Environment Committee – Florence
Catholique and Angie Lantz*

Florence introduced Angie Lantz as the new Permitting Coordinator for the Wildlife, Lands and Environment Committee. Florence raised some concerns with the Directors concerning the renewal of the Sable, Pigeon and Beartooth water licence. Lutsel K'e was invited to a meeting with BHPB on the renewal but did not feel there was adequate consultation. The community is concerned with the transfer of authority over Ekati water use and disposal from the NWT Water Board to the Mackenzie Valley Land and Water Board and finally to the Wek'eezhii Land and Water Board. For the SPB renewal, the community would not like to see a licence run until the end of the operation. The community would also like to see the security reassessed periodically, plans submitted for each pit in advance of actual operation, and that the impact and benefit agreement be revised in light of the new operations.

Florence also raised the issue of resources and capacity for the community. The Lutsel K'e First Nation has a research protocol that includes costs for any consultation to be done with the community. The current funding for the Wildlife, Lands and Environmental Committee includes \$46k from the Interim Resource Management Assistance Program through DIAND, \$40k from Akaitcho Territory Government and funding from both the Environmental Monitoring Advisory Board and the Snap Lake Environmental Monitoring Agency. Members of the WLEC have raised questions about why the community is expending funds to review the SPB renewal when the Agency should be doing this work or making a contribution towards these costs.

Bill responded by saying that the Agency too had submitted comments on the SPB renewal and that such comments will be provided in advance of regulatory deadlines where possible, to allow others to use or respond to Agency input. The company itself is a very good source of information on the mine and is often more than willing to visit or provide additional documentation or presentations. The Agency will also assist, within its own capacity and budget, any community that may have questions about the environmental performance at Ekati. Bill stated that to date, most of the requests the Agency has ever received have come from Lutsel K'e and that the Directors and staff have provided information, written updates and memos, discussed matters over the phone and visited the community. Under the Environmental Agreement for Ekati, which is different from the agreements for Diavik and Snap Lake, the Agency cannot provide funding directly to communities.

Open House in Lutsel K'e—Approximately 10 community members

The Agency hosted a community feast that was held in the Council Chambers on the evening of September 11, 2008. A short PowerPoint presentation was made by the

Agency that included photos from the mine site visit that took place the previous two days.

A community member asked a question about the cause of the Fay Lake spill. The Agency responded by saying that it was still under investigation by both the company and the regulators. It was explained that BHPB had contacted community leaders and the regulators upon finding it, and that a temporary road was built down to Fay Lake to remove the processed kimberlite before the ice on the lake melted. The Agency said it believes that the company has done a good job cleaning it up.

An elder said that some caribou have recently been seen with leg wounds that may be due to crossing of roads at the mines. Bill explained that BHPB put in the first caribou ramps along the Misery road about 2003 or 2004 and that it is working with communities to place more of them. Tim added that the company has said it will need more help from the communities with caribou ramps if the Sable road goes ahead.

Another community member noted that she had worked at Ekati in 2001 when a dead caribou was found in front of the main camp on the shores of Kodiak Lake. She wondered whether it was ever reported and documented. The Agency undertook to check the relevant WEMP report and to report back to this individual.

Lutsel K'e First Nation Council, WLEC and Community Members

Approximately 12-15 community members participated in a meeting with the Agency where a PowerPoint presentation was given on the morning of September 12, 2008 in the Council Chambers. Dennis Drygeese acted as the interpreter.

Questions from the participants included a concern why the company does not want fish back in the pit lakes after the mine closed. The Agency responded by saying that the company is of the view that compensation has already been provided to the federal government and that BHPB may also be concerned that it will assume some liability if fish are allowed back in the lakes. One community member asked whether fish at the mine site had tapeworms before the mine began operations and whether fish could be cured of these parasites. Tim undertook to respond by looking at the baseline information the company may have filed. Bill also mentioned that the company is continuing to study the tapeworm issue in slimy sculpin in Cell E to see if those fish have similar levels as those downstream.

Some community members said that they would like to know about problems at the site as soon as possible, with particular reference to the Fay Lake spill. Bill responded by saying that BHPB had told the Agency that calls were made to community leaders soon after the spill was noticed and that the company appears to be willing to have visitors to the site, including two people from Lutsel K'e who were at that time at Ekati.

Some community members expressed concerns with contaminants in the tailings and waste or spilled oil. Tim mentioned that the Agency had recommended rope and flagging

tape over the contaminated snow site on the waste rock piles after ducks were observed in the pond. The company has done this and there does not appear to be a problem now.

Florence Catholique and Angie Lantz raised a number of issues as follows:

- The community wants to be involved in the fish studies;
- Who determines what happens with the fish habitat compensation funds?
- Is it possible to revegetate the waste rock and tailings? The community would like to meet with the company and other experts to look at this issue.
- BHPB previously assisted and funded a GIS technician position in the community but this stopped once Chris Hanks left BHPB. The community would like to pick up this work again.
- The community wants better overall communications with BHPB.
- There are concerns with permafrost after reviewing Senator Sibbeston's report on climate change.
- As a result of the Fay Lake spill, there are concerns with the barriers or berms that are located or should be located at the north end of Cell B.
- How much chloride will be discharged from the LLCF and what will the effects be downstream?
- How can the Agency assist with Traditional Knowledge studies?
- What was the aquifer like beneath the Ekati mine site and in which direction did this underground water flow?

The Agency undertook to transmit these concerns to BHPB and the regulators, as part of its mandate to convey the issues and concerns of Aboriginal peoples.

Prepared by: Kevin O'Reilly, Agency Manager

Date: October 9, 2008