



# Yellowknives Dene First Nation

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Rebecca Chouinard  
Mackenzie Valley Land and Water Board  
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Dear Ms. Chouinard:

## **Re: Gahcho Kue – Permit and License Application (MV2005L2-0015 & MV2005C0032)**

The Yellowknives Dene First Nation (YKDFN) has reviewed the November 2013 application submitted by De Beers and has noted a number of concerns and limitations. The central concern is that the project has failed to comply with the Measures issued by the Review Board. YKDFN remain hopeful that the outcomes of the Environmental Impact Review are acted upon, ensuring that the process works as intended – that the Measures of the Panel actually mean something – otherwise this entire process is empty and inaction on the part regulators and governments makes them complicit. The details of these failures are found in the YKDFN's November letter responding to the Pioneering Land Use Permit.

### **Specific Concerns:**

#### **Tab 4 – Updated Project Description**

- The project hasn't provided any evaluation of the impacts of the mine rock piles or considered different closure options. If the project has undertaken engineering analysis that says increasing the height by a third doesn't alter the conclusions drawn, then this analysis should be presented. Given the difficulty that Snap Lake has had with its North Pile Management Plan, YKDFN is disconcerted to see unforeseen changes occurring with this aspect – changes that may not have been fully considered in terms of impacts (in the same way that Snap did not think through the impacts of a lack of paste production).
- Simply concluding the piles need to be higher may not meet with community expectations for closure. The project must explain how they intend to gather community input in terms of options selection for operations (If this project is truly being designed for closure, then the operations should not prejudice the options available).

- Section 7.3.3 - Mine Rock Pile Characteristics: The Yellowknives Dene do not have experience in this matter nor are there resources available to provide expert assistance. After enquiring with the company, we understand how this value was derived.

YKDFN recommend that the Board, the Company and NRCAN (?) work together to provide a summary sheet that considers provides context for the communities struggling to interpret these applications. This summary should include examples from the NWT and Canada, discussing the relationship between slope (horizontal, vertical stacking), material competency, best practices, lessons learned (examples) from failures and how the final safety factor is derived.

- Section 12 – the project misuses the term Objectives in the context of closure. Furthermore, it presents these objectives/goals but it fails to note that they have been unilaterally defined.
- Within section 12, there are number of soft passages that effectively allow the company to move away from whatever commitments may exist. For example, the objectives include “to the extent practical”, without defining who is declaring what is practical. YKDFN are not expecting the impossible, but it should go without saying that in closure the companies and the First Nation have different viewpoints on what is practical.

Similarly, the limitation that De Beers will use only proven technology is a weakness. Elsewhere, the company has expressed its view that northern revegetation is difficult and may not be possible. However, if the company is not joining in the research effort then they will not be required to undertake this effort if the limitation is in place and the site will be left a lake with gravel pads – with possible end use completely different than when they took over the area. YKDFN would have preferred that these soft passages be removed prior to submission, and sought to ensure clarity in the EA process, but the shortcoming remains.

- It seems unnecessary to point out that De Beers will comply with the legal requirements for closure.
- Section 12.1.3 should indicate the initiation of critical research for closure, particularly related to the re-establishment of the aquatic ecosystem and revegetation.
- Section 12.2 should provide clarity on the storage of material for reclamation activities. As written it appears that the material will be incorporated within the south pile. Were this to occur, it's been YKDFN's experience that industry is extremely reluctant to consider re-mining the waste rock piles for material (It is occurring at Diavik, but as

recently as last week the project consultants were discussing the difficulty of doing so as a reason not to do so at Ekati)

- Section 12.3 should include a figure that provides details on when the project expects to encounter any type 3 or potentially ARD generating rock, so that parties can be sure that it does not occur at the end of mining and becomes an issue for isolation.
- This section notes that there will be a thick cover of clean rock, but does not discuss what the objectives are for this material. YKDFN's expectation is that the cover will follow the practices employed at Ekati, with 5m of clean rock over the PK and PAG material.
- Section 12.4 and 12.5 both state that further information on progressive reclamation can be found in the processed kimberlite management plan (tab 23), but after reviewing it, YKDFN finds the section barren in this regard.
- Section 12.7.1.1 provides no detail on how the project will assign value to the materials for consideration. In particular, YKDFN would like to see information on the costs of transportation if empty backhauls are available and what [negative] value the project assigns to leaving garbage on the Chief Drygeese Territory.
- Section 12.7.1.2 doesn't describe the thickness of the cover of mine rock. YKDFN expect that a cover similar to Ekati will be used, where 5m is used for isolating potentially deleterious materials.
- Section 12.7.2 discusses the 'Inert materials landfill' and the cover. Given some of the materials that are being placed in the landfill (for example, electrical cable), YKDFN are concerned that the leaching may not be as 'inert' as the company believes. This is something that needs to be reviewed and considered.
- Section 12.7.9 YKDFN expect that any quarries will be redeemed to the same standard as other areas at site, not just 'blending' with the surrounding area, but meeting the test of providing for the desired end use (useful/desired wildlife habitat)
- Nothing in section 12.8.2 details what will be re-vegetated. This is unacceptable to YKDFN and inconsistent with the desired end use. The section starts with noting that it is 'challenging' to do so and then closes with an objective that states that the objective will be a "stable landscape that encourages natural colonization, encroachment, and regeneration of endemic plant species". This is tantamount to doing nothing and is a troubling insight into the companies perspective to site closure.

The objective must be not just to do something, but to have a desired result. Simply

grading the site is an empty goal; the objective must reflect the establishment of vegetation and the establishment of desirable/suitable wildlife habitat.

#### **Tab 8: Engagement Plan**

- The engagement plan primarily contains rearward looking engagements, thus does not conform with the Board's new guidelines on life of project engagement. The life of mine actions (found in section 6.1) amount to 8 sentences. In particular, the portions of Ni Hadi Yati are not relevant, as that process expressly states that it cannot be used as a substitute for the projects community engagement.
- The future engagement efforts treat all parties similarly, when the Yellowknives Dene have constitutional rights that must be respected. Secondly, the nature of consultation is that there is engagement and potential accommodation, thus items like "delivery of ... a report" is empty towards meeting the goals outlined in the Board's policy.
- In section 5.6 the project notes that the remainder of the section provides additional detail on engagement between the Tlicho citizens, Tlicho Government and De Beers. This is incorrect – the Yellowknives Dene are a completely separate First Nation. The Tlicho people that the project believes the Yellowknives belong to reside to the North and West of the YKDFN.
  - o Not only is does the proposed fail to conform, but in particular there a method to ensure that the results of engagements with YKDFN are mutually agreed upon (joint sign off). Recent applications by other companies have alleged that FN had no concerns with a particular project, when in fact the company had failed to contact the impacted nations. This joint sign off is essential to ensuring that the information being provided is mutually understood and provides certainty for all parties.

#### **Tab 9 – Draft License**

- The Scope of the license should include the Winter Road. At present, we believe that this is held within another permit, but a definite focus should be to incorporate all permits that are required for the project into a single permit/license. Reviewers have limited capacity and splitting the project into numerous files increases the complexity and costs.
- Definitions: Is the minister of this project AANDC? Isn't GNWT going to be taking on a number of the Ministerial roles (holding security for one?)
- Wherever the proponent is providing notice to the inspector, it should provide notice to the Parties as well. YKDFN are entitled to be notified on what activities are occurring on

their lands. Email notification should be sent to [environment@ykdene.com](mailto:environment@ykdene.com).

- Part E: Still no monitoring plan for the incinerator.
- Part F, item 8: The use of only three EQC's seems inconsistent with the licenses at other mines where a broader range of compliance criteria are in use.
- Part F, item 15: Could be written in a simpler manner.
- Part F, item 21: Wouldn't this simply speed the fishout?
- Part G, item 7: An objective of the AEMP should be to validate the closure of the site, given that the vast majority of obstacles to successful closure will be aquatic in nature, recognizing this and means the program keeps this 'long-view' and will ensure that the data collected is appropriate.
- Part I: Given the extremely short lifespan of this mine, the first interim closure and reclamation plan should be submitted for approval within 12 months of the site becoming operational.
- Part I, item 3: Type, change Park to Part.
- Schedule 1, item u: Include a specific reporting requirement for stack testing every three years.

#### **Tab 10: Commitment Table**

- The commitment table dates from December 2012. It should be updated to reflect progress on existing commitments and incorporate new ones.

#### **Tab 15: Wildlife Effects Monitoring Program**

- YKDFN still believe that the caribou distribution monitoring program is flawed. As previously described, the nature of the transects limits the utility of the research.
- The WEMP still fails to address the previously identified issues associated with the winter road and the project proposal does not conform to the Measures issued by the MVEIRB in the EIS decision for this project. The proposal submitted with the pioneering permit (PLUB) does little to provide details on how the project will meet the requirements of the MVEIRB decision.
- The project still is not in compliance with the measures required by the MVEIRB decision. The Board approved the PLUP, but YKDFN can only expect that at some point,

*the regulators and Crown must recognize that the project must be made to comply and undertake actions to do so.* The failures described in YKDFN's letter to the Board in early November remain:

- Measure 2 is not addressed within any of the thousands of pages – there is no mechanism from the company to evaluate caribou behaviour. The current plan is for daily drives up and down the road, and if groups of caribou are observed (the company has not described what a group of caribou is) then it is possible that additional track surveys will be undertaken. The trigger is not clear, nor does it make sense that track counts equate to behaviour monitoring as required by the MVEIRB. Behaviour monitoring protocols have been established at Ekati and Diavik – the project is ignoring these best practices to establish a new method that obviously fails to achieve the desired result (ignoring the fact that Ekati used track counts for other, non-behaviour research, and discarded the method because they found it lacked the rigour that they desired).
- Measure 3 is at the very same point it was several months ago. No progress has been made towards establishing cumulative effects monitoring and in particular, no progress towards a management approach.

**Tab 16: Draft Closure and Reclamation Plan**

- Overall, the Conceptual Closure and Reclamation Plan fails to conform to the guidelines issued by the Land and Water Boards. This section needs to be re-written to adhere to guidance and requirements that exist. On page 11, the project acknowledges the existence of these guidelines, but failed to submit a plan that meets this requirement.
- Section 2 - Guiding Principles: only at the end of the guiding principles does the importance of the land come into play, and seems to be subjugated under the initial four points such as avoiding long term care. This is approaching the process in a backwards way – it is the end vision which should be the priority, and the mechanisms to achieve that vision identified as a means to an end, not a goal in and of itself.
- Section 3: the project misuses the term objectives. It should be re-written (likely as goals) and conformity with board guidance should be required.
- Section 3, page 12, Bullet 11: The end use of the site has not been identified. As described, establishing clarity on what the end use of the site is essential for the subsequent steps.
- Section 3: This plan, as it is, does not address the suggestions of the Review Board; in particular the codification of the end uses, the water quality objectives, and the metrics of assessing the fish health community. In addition, risks of full lake mixing and improved recovery must be identified within the closure Goals and Objectives (MVEIRB

suggestions 1-3).

- Section 4 – Hearne Pit: YKDFN believe that the PK in the pit should be isolated by mine rock. Issues such as this are a key reason that the ICRP process should commence as soon as possible. We aren't going to review each mine specific element, but wanted to highlight that a number of significant differences remain between what was reviewed in the EA and the community expectation.
- Section 4 – Tuzo Pit: Re-mining at Diavik has shown that the re-handling is not impractical. The company is removing closure options/alternatives prior to meaningful consideration.

Overall – the closure and reclamation project must have an additional focus on the perception of landusers on closed industrial sites and the threat that they pose. Industry, Government and Parties are all presuming that the area will eventually return to the usable landbase, but given the large number of failed mines in the NWT (over a hundred contaminated sites in the Chief Drygeese Territory), there are lessons to be learned on how to reduce the perceived impact of closed sites. Secondly, if the site is not returned to the area that landusers are accessing, that presents new challenges for all involved.

#### **Tab 19: Wildlife and Wildlife Habitat Protection Plan**

- Section 4.7 There is no monitoring planned to assess the site mitigations. For instance, at present 'caribou crossings' are presented as a mitigation, when in fact there is no evidence that supports their use or effectiveness
- Section 4.7 notes that caribou will only be moved away in specific circumstances, such as when there are incoming flights or an emergency. Are these the only circumstances? This should be written in such a way that there is clarity – if additional circumstances would necessitate this, please provide a list.
- Section 5.1 There is no methods or indication how staff can use the information to look for trends in wildlife presence. This needs to be corrected and made consistent with the section 4.7 whereby all caribou sightings are recorded (or is it simply encouraged).
- Section 5.1.1 notes that staff will be encouraged to record observations. This leads to inconsistent reporting and limits the data utility and makes any trend observations highly suspect.
- Section 5.5.1 indicates that the Winter road will have daily security patrols. Again, this fails to meet the measures required by the Review Panel. It is disappointing that the company does not feel that they need to comply with these required actions.

### **Tab 21: Spill Contingency Plan**

- YKDFN have significant concerns with De Beers approach to environmental stewardship. While operations at Snap Lake seem to be improving, the recent history has not been one of excellence, which is expected of operations within the Chief Drygeese Territory.

With this in mind, YKDFN believe that Gahcho Kue should be directed to hold a spill response exercise prior to significant construction activities. This will ensure that the project staff and contractors are able and ready to respond to any spill incidents. YKDFN recommend that a representative(s) from AANDC, EC and our FN be in attendance to observe the exercise.

### **Tab 22: Waste Management Framework**

- It is not clear where waste monitoring is occurring – under this plan or another? If we are to be assured that attractants are not being deposited, vigilance is required and haphazard approach is not acceptable. Clarity is required (it is mentioned under the WWHPP, but it's not clear what the methods will be or where it will be administered under).

### **Tab 25 - Erosion Plan:**

- Monitoring is only going to occur at freshet, summer, and after extreme storm events
  - o During pumping, the flows will be occurring at a rate lower than freshet, but much higher than the regular flow regimes. Given this, the inspection routine should be more often and better defined during the destruction of Kennady Lake.
  - o 'Extreme storm events' are not defined.
- The results of the monitoring efforts are tied to management response in only the vaguest of ways – 'if something happens, something may be done'. The use of particular triggers with potential options (a large number of potential responses are included as an appendix), including the response timelines, would provide a base scenario where the project is compelled to act rather than relying solely on the companies interpretation of the issue.
  - o The document does discuss the Canadian Water Quality Guidelines, but doesn't link these guidelines to management either.
- The scope of inspection does not directly include the downstream environment, which is a concern, particularly during pumping.
- Reporting: YKDFN believes that this section a reference to report any 'major' sediment control activities, not just incidents. This should be included as a paragraph within an annual report – either particular for this plan or within another yearly filing. The intent is to see that the project is working to pro-actively manage environmental issues, which is a major concern that YKDFN has had with De Beers Snap Lake project, where it seems that it has simply been a reactive approach since operations commenced.

- o Our definition of 'major' would be something that requires more than a day's effort, including planning.

**Tab 26: Incinerator Management Plan**

- The emission estimate methods are described in the air quality monitoring plan. A reference to that approach should be included in section 6.
- At present, the air quality and emission monitoring plan (Tab 14) does not contain any details on how emissions will be monitored to demonstrate compliance other than "intermittent stack sampling"
- The Air Quality plan suggests that the details of the emissions monitoring will be found in the incinerator management plan. Other than a reference that the 'results of and testing undertaking on the stack emissions', there are no details provided.
- De Beers must provide clarity in their approach including details on methods and the sampling interval. YKDFN recommend that at a minimum, the project use the same three year sampling period, starting during commissioning and construction, that other sites have adopted.

**Tab 31 - Vegetation Plan:**

- Section 1.2 Approach to Monitoring discusses the idea of evaluating effectiveness of design, but does not provide the linkage within the objectives described in section 1.3 (i.e but what approach or criteria is are the predicted and mitigated impacts being evaluated)
- Overall, the monitoring is not linked to management
- The project should establish active and natural revegetation sample plots early in the mine development and evaluate their success relative to the reference sites in this plan

**Closing Concerns:**

YKDFN would like to compliment the company on a much improved application, compared to the PLUP. However, there are still a number of concerns that need to be addressed – first and foremost the lack of conformity with the Review Panel's Measures, with the Board's engagement policy and the Board's closure guidelines. Secondly, we believe that more information is required to flesh out the monitoring plans, providing details as opposed to generalities. As always, YKDFN look forward to working with the project to improve these plans and in the process, hope that it becomes a model of environmental stewardship by industry.

Sincerely,



Chief Edward Sangris  
Yellowknives Dene First Nation (Dettah)

cc: Veronica Chisholm (By Email)