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September 5, 2006

Violet Camsell-Blondin, Interim Chair
Box 32
Wekweeti NT
XOE 1W0

RE: DDMI Water License Renewal/ Ammonia Management Plan Directive

Dear Ms. Camsell-Blondin,

Diavik Diamond Mines Incorporated has applied for their Water License to be renewed in 2005. Since the application has been submitted there have been numerous amounts of workshops and meetings held in retrospect. We have concerns that we are not involved in this process to date and insist on being participants at the hearing that is to be held in October, 2006.

Deninu Kue First Nation hereby invokes our Aboriginal and Treaty rights under Treaty # 8 in adhesion 1900; The constitution act of 1982 section 35 (1) states that “existing Aboriginal and Treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed”. Attached is the Akaitcho Territory Map that was signed off by the Federal Government and Government of the Northwest Territories as part of the Frame Work Agreement signed July 25, 2000. All of the Akaitcho Dene First Nations, Yellowknives, Lutsel Ke, and Deninu Kue are signatories. The proposed application is within Akaitcho Territory. Deninu Kue First Nation has the right to be consulted in good faith as well as to give reasonable consent with this type of development and mineral activities that is to occur in and around the Lac de Gras Area.

If you have any questions in regards to this letter, feel free to contact Rosy Bjornson, IMA Coordinator or myself @ (867)394-5407/4335.

Sincerely,

Robert Sayine
Chief DKFN
CC: Akaitcho IMA Regional Office
NWT Treaty # 8 Tribal Corporation
Chief Addie Jonavson, LKDFN
Chief Peter Liske, YKDFN (Dettah)
Chief Fred Sangris, YKDFN (Ndilo)
Appendix "A"

Akaitcho territory as asserted by Akaitcho DFN

--- Akaitcho territory
Approx. 480,000 Km²
--- Treaty Boundary
### Transaction Report

**FOR:** WLWB 1 867 713 2502

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This is a transaction report showing the receipt of a fax transmission on September 7, 2006, at 4:39 PM. The sender's number is 8673945122, and the fax was received with no issues.
VIA FACSIMILE:

Dear Mr. Lennie-Misgeld

Diavik Diamond Mines Ltd. - Water Licence Renewal

It is the Department of Environment and Natural Resources’ (ENR) understanding that comments provided on the Diavik water licence renewal will be used to create the agenda for the Pre-hearing Conference (Technical Workshop) in December. As such ENR has reviewed the documents provided by the Mackenzie Valley Land and Water Board and would like to discuss the following issues at the Technical Workshop.

Air Quality

A requirement of the NWT Waters Act is that:

14 (4a) Where an application for a licence is made, the Board shall not issue a licence unless the applicant satisfies the Board that

(i) the use of waters or the deposit of waste proposed by the applicant would not adversely affect, in a significant way, the use of waters, whether in or outside the water management area to which the application relates,

(4c) any waste that would be produced by the appurtenant undertaking will be treated and disposed of in a manner that is appropriate for the maintenance of

(i) water quality standards prescribed by regulations made under paragraph 33(1)(h) or, in the absence of such regulations, such water quality standards as the Board considers acceptable

.../2
In addition the *Mackenzie Valley Resource Management Act* states:

102. (1) The Board has jurisdiction in respect of all uses of land or waters or deposits of waste in the Mackenzie Valley for which a permit is required under Part 3 or a licence is required under the Northwest Territories Waters Act.

The current water licence does not address the concern of airborne wastes from industrial activity and their potential deposition into water, specifically particulate fractions PM$_{2.5}$ & PM$_{10}$, Total Suspended Particulate (TSP) and NO$_x$ and SO$_x$ (as precursors of particulate formation and acid deposition). ENR staff would like to see the inclusion of an Air Quality Monitoring Plan in the renewed water licence to ensure that water is not adversely affect, in a significant way.

**Dust Deposition Monitoring Program**

Diavik's Dust Deposition Monitoring Program 2004 suggests that dust levels:

- exceed background levels up to 1 km from the site,
- that there are higher deposition rates in the summer, and
- that highest deposition occurs surrounding the A154 pit and north of the main camp.

Dusting of the areas surrounding the mine may lead to earlier snowmelt and early green-up thus attracting wildlife in the spring. In addition, experience in Alaska has shown that dusting can change the composition of plant communities through physical and chemical changes. Lichens, key forage for caribou, are also particularly susceptible to the accumulation of metals carried in dust.

Diavik states in the executive summary of the Dust Deposition Monitoring Program that habitat assessment reviews will be conducted every third summer to assess habitat community vitality, however results of these reviews are not presented. The linkages between dustfall and vegetation changes are vital in assessing impacts to vegetation and wildlife habitat and may trigger the need for additional mitigation of dust generation.

Some results of the habitat assessment work is reported in the 2004 Wildlife Monitoring Report however it makes no linkages to dust deposition levels from the Dust Deposition Monitoring Program. ENR staff request that the Dust Deposition Monitoring Program be revised to include results of the habitat assessment work and direct linkages between dust deposition and observed plant responses. This may require a revision of study methods and design.
Waste Management Plan

Diavik's Waste Management Plan-Operational Phase Version 8, March 2005, states as an objective to "prevent and reduce adverse impacts on the environment including wildlife and wildlife habitat". Diavik's decision not to house waste incinerators in the main complex has led to the storage of kitchen waste in the Waste Transfer Area prior to incineration and led to the potential increase in impacts to wildlife. Since Diavik has reverted to using the Waste Transfer Area as a permanent strategy for waste management, a more thorough review of this situation is appropriate. Odours from the Waste Transfer Area are known to attract carnivores and may have been a contributing factor to last year's grizzly bear mortality. The 3m high chain link fence surrounding the Waste Transfer Area is not sufficient to restrict wildlife access, since wolverine and fox have been known to climb the fence or enter through unattended gates. Not only should access to waste be restricted, but odours should be managed such that carnivores do not continue to be attracted to the site. Diavik's 2004 Wildlife Monitoring Report indicates that carnivores are also being attracted to the landfill suggesting difficulties in waste segregation. Wildlife Division, ENR requests that the details of the Waste Management Plan be revisited in light of these ongoing issues.

Interim Abandonment and Restoration Plan

Diavik's stated objectives for mine abandonment and restoration provided in the Interim Abandonment and Restoration Plan 2001 include:

- safe wildlife use over the long term (objective 2)
- final surface conditions that support natural revegetation (objective 4); and,
- to enhance natural revegetation where practical (objective 4).

Despite these objectives little detail is given in the Plan as to how these objectives will be met. General information on strategies for habitat reclamation is provided under the heading of Ecological Restoration, which includes options for the reestablishment of vegetation. However, no information is provided on where these strategies might be implemented and the criteria for determining their success or failure. Further, the Plan mentions habitat restoration only in reference to the Country Rock Storage Areas and no other site components. Even in this case it is presented only in general terms. It is unclear whether habitat reclamation strategies will be implemented at other site components and to what degree.
Given recent preliminary results in revegetation work done on site\(^1\) a revised Interim Abandonment and Restoration Plan is warranted. This revised Plan should state clearly how habitat restoration will be addressed for each site component, the criteria for assessing success and the adaptive strategies necessary for responding to new information and unanticipated challenges. ENR staff requests that a revised A&R Plan be submitted through a new license.

The Interim Abandonment and Restoration Plan 2001 recognizes the need for shallow slopes or ramps with shallow gradients to allow caribou movements across Rock Storage Areas upon reclamation. However, it may be necessary to consider these access slopes/ramps during operations as well. Caribou may seek out elevated habitat for insect relief and must be able to depart from the rock pile without the risk of injury. The slope and surface material of rock storage area embankments, while not encouraging access, must allow for wildlife movement onto and off of the pile. Proper sloping and material size is necessary so as not to endanger wildlife that may access the rock pile. ENR staff recommend that DIAVIK include this consideration as part of their progressive reclamation strategy.

**Term of the Licence**

ENR staff do not support the 15 year term proposed by Diavik. The licence renewal process allows stakeholders an invaluable opportunity to offer technical advice to the MVLWB on issues related to our respective mandates. As well, the term of water licences should be consistent for all proponents and a 15 year term is unprecedented.

Should you have any questions regarding the above, please contact Mr. Jason McNeill, Environmental Assessment Officer at 920-8071.

Sincerely

\[\text{Signature}\]

Doris Eggers  
Director  
Policy, Legislation and Communication

c. List Attached

Mr. Gavin More
Manager, Environmental Assessment Policy Legislation and Communications

Mr. Emery Paquin
Director, Environmental Protection

Ms. Susan Fleck
Director, Wildlife
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Tuesday, November 22, 2005 11:30 AM
To: MVLWB Permit Email (MVLWB Permit)
Cc: 'Peter Lennie-Misgeld'
Subject: FW: EC Renewal Comments.doc

-----Original Message-----
From: Wilson, Anne [Yel] [mailto:Anne.Wilson@EC.GC.CA]
Sent: Monday, November 21, 2005 11:37 AM
To: peter@mvlwb.com
Cc: Harbicht, Stephen [Yel]; Fox, Dave [Yel]; Fournier, Mike [Yel]
Subject: EC Renewal Comments.doc

Good morning Peter,
Better late than never...! Sorry these weren't in on Friday.
Give me a call if any questions.
   Anne

<<EC Renewal Comments.doc>>
November 21, 2005

Mackenzie Valley Land and Water Board
P.O. Box 2130
7th Floor - 4910 - 50 Ave.
Yellowknife, NT X1A 2P6

Attention: Peter Lennie-Migseld

Re: Diavik Diamond Mine Inc. (DDMI) Water Licence Renewal Application – Preliminary Comments on Renewal Terms - MV2005L2-009

On behalf of Environment Canada (EC) I have reviewed the documents submitted in support of Diavik Diamond Mine Inc.'s application to renew their Type “A” Water Licence N7L2-1645 (now MV2005L2-009), and provide the following comments for your consideration.

Discharge Criteria
Environment Canada recommends that the discharge criteria set out in Part H. 7.a) be reviewed in the course of the renewal process. Specifically:

- the value for ammonia should be assessed once the results of further investigations (Part H. 26) are available;
- nitrate should be added as a regulated parameter, with discharge criteria set at levels which are protective of the most sensitive species outside the 0.01 km² assessment boundary. The criteria used in the Snap Lake licence would be a reasonable starting point for this, but it should be evaluated in the context of the discharge plume study and other study results when they are available.

Surveillance Network Program
The existing Surveillance Network Program (SNP) requires the collection and analysis of samples for a range of parameters. EC suggests that total dissolved solids (TDS) and hardness be added to the “Major Ions” category and reported in the monthly reports, as TDS is one of the parameters which may change in the receiving environment due to diamond mine effluents.
The requirement for quarterly sediment sampling at 1645-19 should be revisited. From a brief review of the AEMP sediment results, it appears the sediment concentrations of most parameters are comparable to those at 1645-19. This may be due to the use of a 5 cm thick “slice” being analysed, and annual sampling frequency may be sufficient for this coarse scale of detection. If changes are seen or expected, it would be more useful to initiate a special study of the surficial sediments and/or suspended sediments.

Aquatic Effects Monitoring Program (AEMP)
The Diavik Technical Committee has had discussions with the company on a number of aspects of the current AEMP where problems have been identified. EC acknowledges that Diavik is taking steps to address these concerns concurrent to the licencing process. Concerns have included data handling and management, sampling frequency, seasonal variability which is not being evaluated, QA/QC practices, use of in-lake control sites, and identification of appropriate water quality thresholds. Effect sizes must be determined, to know that the program has the power to detect change.

Environment Canada recommends that there be a water licence requirement for submission of a revised AEMP for approval which addresses the above items. It should include an independent audit of the data collected to date, and a comprehensive section on quality control and assurance. The revised program and subsequent AEMP reports should require approval by the Board. In addition, a periodic review of the AEMP methods and overall program should be done, perhaps every three to five years, and submitted to the Board for approval.

General
Minor items have been identified with respect to the definitions, and of an editorial nature. EC expects these would be picked up in the first draft of the renewal licence, and requests the opportunity for reviewers to provide comments on the draft licence.

There has been discussion on integrating various lines of evidence in order to evaluate environmental effects. EC would like to note the need to integrate air quality monitoring with other environmental monitoring results, insofar as air sources contribute contaminant loading to surface waters.

Please do not hesitate to contact me at (867) 669-4735 with any questions or comments regarding the foregoing.

Yours truly,

Anne Wilson
Water Pollution Specialist
Assessment and Monitoring Section,
Environmental Protection Branch

cc: Steve Harbicht (Head, Assessment and Monitoring, EPB)
    Mike Fournier (Coordinator, A&M, EPB)

Canada
November 18, 2005

Peter Lennie-Misgeld, Senior Regulatory Officer
Mackenzie Valley Land and Water Board
P.O. Box 2130
Yellowknife, NT X1A 2P6

Dear Mr. Lennie-Misgeld:

Re: Water License MV2005L2-0009; Renewal Application of N7L2-1645 for Diavik Diamond Mines Inc.

The Department of Fisheries and Oceans, Fish Habitat Management (DFO) is providing this letter to indicate that changes to the Terms and Conditions of the above mentioned Water License are required.

The major issues identified include:

- Requirements to update a number of management plans,
- The review and approval process for plans and reports,
- Re-evaluation of the Aquatic Effects Monitoring Program, and
- Duration of the License.

Management Plans

Many of the existing terms and conditions and requirements listed in the present N7L2-1645 licence are outdated. In addition, some operational procedures have changed therefore management plans should be updated and submitted for Board approval. For example, the current Water Management Plan indicates that the North Inlet has an intermediate dike but the dike has never been constructed. The Water Management Plan should also be revised to incorporate changes as a result of licence amendments due to ammonia.

The management plans should be updated and submitted to the Mackenzie Valley Land and Water Board (Board) for approval.

Review of Reports

The technical review of annual reports and monitoring plans has primarily been undertaken by the Diavik Technical Committee (DTC) but not all of the reports required to be filed by
the License N7L2-1645 require Board approval. Consequently, many of the reports that the company has submitted are filled with errors. These errors are particularly evident within the Aquatic Effects Monitoring Program (AEMP) Reports as previously noted in DFO correspondence dated June 7, 2002 and June 17, 2003 (and others).

The 2001 and 2002 AEMP Reports contained numerous errors in data reporting and in comparisons with baseline results. Since subsequent revisions of the 2001 and 2002 AEMP Reports and submissions for 2003 and 2004 contain many errors the process for review and approval needs to be revised.

It is especially important that the company undertake a more thorough internal review of their reports and address the inconsistencies before the reports are submitted to the Board.

Aquatic Effects Monitoring Program

DFO has significant concerns with the licence conditions, review process, and the quality of monitoring and reporting pertaining to the Aquatic Effects Monitoring Program.

DFO indicated in it’s previous AEMP reviews that DFO had significant concerns regarding the design of the monitoring program that diminish the program’s value. There are fundamental problems with baseline data and a recent review by Zajdlik & Associates Inc. (September 27, 2005) for the Department of Indian Affairs and Northern Development has confirmed the concerns that have been raised by regulators.

At issue is the improper use of basic statistics, such as reporting of median values based on sample sizes of n=1. In addition, there is little confidence in the integrity of the data and it’s interpretation since many errors have been noted but not corrected from previous reports. DDMI should be required to correct the errors in the dataset before the renewal should be considered.

The study design of the AEMP needs to changed, and appropriate statistical measures and tests incorporated. In general, the DDMI AEMP includes too few samples, insufficient sampling periods, and minimal analysis. This makes it impossible to detect subtle but potentially adverse ecological changes in water quality and the aquatic community of Lac de Gras. The threshold levels required to initiate mitigation should be re-examined within a more formal Adaptive Management Plan.

The water licence is lacking both a definition for “Adaptive Management” and terms or conditions for an Adaptive Management Plan. It is necessary to require an Adaptive Management Plan that incorporates definitive threshold values that trigger mitigative action to protect the aquatic environment.

A number of these outstanding issues concerning the AEMP have not been resolved by the DTC. DFO therefore recommends that the Terms and Conditions of the Water License pertaining to the AEMP be changed and that the proposed changes discussed more fully in technical sessions and or a public hearing.
Duration of License

A number of technical issues have not been resolved and are still outstanding. These fundamental issues need to be resolved before the current licence expires. The duration of a renewed term of the license needs further discussion.

DFO has indicated that there are concerns with the Terms and Conditions of the above mentioned Water License. Specific recommendations for changes will be discussed during upcoming technical sessions and will be contained in our intervention.

If you have any questions or require clarification regarding these comments please call me at (867) 669-4926.

![Signature]

Dave Balint
Area Habitat Biologist
Department of Fisheries and Oceans-Western Arctic Area

DB

Cc Dorthy Majewski, Area Chief, Habitat, DFO
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<td>(867) 669-4926</td>
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November 18th, 2005

Peter Lenne-Misgeld  
Senior Regulatory Officer  
Mackenzie Valley Land & Water Board  
7th Floor 4910 – 50th Avenue  
PO Box 2130  
Yellowknife NT X1A 2P6

Re: Diavik ("DDMI") Application for Renewal of License #N7L2-1645/ MV2005L2 - 007

These are the initial comments of the Tłı̨chǫ Government on the above application.

As requested by the Board's letter of November 1, 2005, these comments outline positions that the Tłı̨chǫ Government will take at the hearing of this application, respecting changes that the Board should make to the License, if it is renewed.

These comments also outline more fundamental positions that the Tłı̨chǫ Government will also take respecting this application, as follows:

- That DDMI is not presently in compliance with important provisions of the License – in particular Parts H, K and L;
- That the Board not grant a renewal of the License until DDMI proves, in a public hearing, that it is fully in compliance with the License;
- That if DDMI does not prove that it is in compliance - in the hearing scheduled for March, 2006 - the application for renewal be dismissed or, in the alternative, the hearing be adjourned to a date prior to August, 2007 when DDMI considers it would be ready to prove it is in compliance; and,
General Position:
The primary concern of the Tłı̨chǫ Government with respect to the application is that DDMI’s diamond mine project be carried out in an environmentally sustainable way. This means that the project must be conducted in ways that pose minimal risk to affected ecosystems, in particular the waters of Lac de Gras and the wildlife that use the area.

To achieve this goal the company’s management practices must fully comply with those terms and conditions of the Water License designed to ensure that effective environmental protection measures are identified and implemented, and that the necessary monitoring programs and other studies are implemented to support those programs and related management activities. The Tłı̨chǫ are very concerned that important terms of the Water License are not being complied with, and that affected ecosystems have therefore been put at risk.

There are three parts of the License that DDMI is presently not complying with:

- Part H - Aquatic Effects Monitoring Program ("AEMP")
- Part K - Ammonia Levels and Management Measures ("Ammonia Management")
- Part L – Abandonment and Restoration Plan ("A&R Plan")

We outline below the reasons for the Tłı̨chǫ position that DDMI is not in compliance in these respects.

The fault and responsibility for this non-compliance lies primarily with the proponent, DDMI. The Tłı̨chǫ Government takes the position that it is also results, to a lesser extent, from the Board’s limited oversight and enforcement mechanisms respecting terms of the Water License. The Tłı̨chǫ will make recommendations respecting amendments to a renewed license that would be intended to address these Board-related limitations and problems.

The present state of these three critical programs are so serious that the Tłı̨chǫ Government takes the position that it would be inconsistent with the Board’s mandate and authority to renew the License before DDMI proves it has effectively addressed these problems and brought itself fully into compliance.

The Tłı̨chǫ Government is convinced that there is enough time for DDMI to do this before the current License expires at the end of August, 2007. These matters are so important that they should be decided by the Board, after a public hearing to fully review and consider those compliance issues. Tłı̨chǫ Government does not object to the hearing starting in March, 2006, as presently
scheduled. These issues of compliance should be the subject of evidence and submissions at that time.

However, unless DDMI clearly proves that it has brought itself into compliance, the Application should be dismissed, or the hearing should be adjourned to a date prior to August, 2007, at which time DDMI should be required to prove compliance, before the Board would grant a renewal of the License.

Aquatic Effects Monitoring Program (AEMP)

The position of the Tłı̨chǫ Government is that the AEMP does not comply with the requirements of Part K, both in its design and its implementation.

The current AEMP was approved by the MVLWB in 2000. A number of studies since then have shown that the design of the AEMP was inadequate and not in compliance with the terms of Part K, and the Plan should therefore not have been approved. (The Tłı̨chǫ expect to show at the hearing that this is a prime example of the Board’s limited capacity and mechanisms for reviewing and enforcing important License requirements.)

In the years since 2000, as each annual report for the AEMP was submitted by DDMI, discrepancies in data, analysis, and the reaching of conclusions by the company have been frequent enough that most, if not all, reviewers have had difficulty in understanding how Diavik reaches its conclusions. With the passing of each year, that concern has increased.

The existing baseline data set for Lac de Gras has only recently been made available by Diavik to reviewers, and there are serious concerns about whether any of it is usable for the monitoring program. It is also not clear that Diavik has been using the data set filed with the Board to conduct its annual AEMP analyses. Diavik has admitted that the current License requirement for an evaluation of the aquatic baseline data, along with a plan to fill any data gaps, was never fulfilled.

This problem of trying to acquire the baseline data from the company, and get it in a form that is usable so that Diavik’s results could be replicated by review agencies, has been a continual and unresolved problem.

At least three reviews of the AEMP (or parts of it) by independent experts have been commissioned, and all have found serious flaws with the program and the
reporting of results. It appears that no reviewer has a high level of certainty that the AEMP is doing its job properly.

Diavik has continually taken the position that, since the program is approved, no changes are required, despite numerous recommendations that changes are required. Since the Board has officially taken the position that reports submitted under the license do not require the Board’s approval for acceptability, there has been no way to ensure that the company submits work that is scientifically credible.

We will introduce evidence at the public hearing that the AEMP is fundamentally flawed - in both its design and implementation - and, as a result, there is no effective early-warning system in place to indicate when changes in the Lac de Gras aquatic environment are taking place.

We believe that this situation could be fixed if Diavik would put the effort into it. This is not simply a matter of tinkering with the existing program — it means changing the design of the program as well as its implementation and reporting techniques. The Tłı̨chǫ Government will make recommendations in this respect at the hearing. We believe that DDMI could redesign its AEMP design and implementation mechanisms in less than 6 months if it properly mandated qualified and independent experts for that purpose.

**Ammonia Management**

In its original environmental assessment, Diavik seriously underestimated the levels of ammonia that would be produced in its mine water, and in 2003 found that the levels in North Inlet water storage pond were rising to the point that they would be out of compliance with the Water License within several months. Diavik’s solution was to apply to the Board for an increase in the ammonia discharge limits by 1,000%.

Through the ensuing mediation process established by the Board, the higher ammonia levels were granted to Diavik for two years, through a package of integrated amendments to the License. Ammonia levels are to revert to the original levels on September 1, 2006, and to be replaced by new criteria according to an ammonia management plan to be prepared by Diavik and approved by the Board by that date.
The amendment agreement required that Diavik, as a basis for developing the ammonia management plan, conduct a number of studies and investigations to explore better ways to manage ammonia on site, ways of treating ammonia before discharge, what happens to ammonia when discharged into Lac de Gras, and so forth. These studies, and the terms of reference for the studies, were to be reviewed by an independent expert reporting to the Board.

This work is still on-going. A critical piece, a discussion paper on ammonia management, which was to identify and evaluate alternatives for managing the problem, has only recently being submitted to the Board for review. This discussion paper is to be the basis of the new ammonia management plan. Technical review by the T'ıłhət Government has found the discussion paper to be seriously flawed, and we have recommended against its acceptance by the Board (see our submission dated 16 November 2005). The required work needs to be done, and then the ammonia management plan needs to be prepared.

Other requirements of the amended Part H have also not been complied with. For example:

- the toxicity testing required for whitefish has not been conducted by Diavik because it argues, incorrectly, that whitefish fry are not available.

- an ecological study on the fate of ammonia released into Lac de Gras is required by the License, but has not yet been submitted to the Board.

It is not likely that all this important work will be completed in time for the March public hearing. But that failure is the fault and responsibility of DDMI. The Board should not relieve DDMI of its obligations in the amended Part H, particularly in light of the fact that those amendments were the result of a mediated agreement to which DDMI consented.

In our view, the requirement for an acceptable ammonia management plan must be proved to have been fully satisfied before the License could properly be renewed.

**A&R Plan**

The current *Interim Abandonment & Restoration Plan* was approved by the Board in 2001. It now appears that this approval was in error, since the Plan does not comply with the majority of the requirements in Part K of the Water License.
For example, a review of this Plan reveals the following deficiencies:

- it does not describe “specific abandonment and restoration objectives” for each mine component.
- there is no “evaluation of alternatives for the closure of each mine component”.
- it does not provide a “description of detailed plans for reclamation, measures required, or actions to be taken, to achieve the objectives stated in the Board’s Guidelines”.
- there is no “detailed description, including maps and other representations, of the pre-disturbance conditions for each site, accompanied by a detailed description of the proposed final landscape, with emphasis on the restoration of surface drainage over the restored units”.
- there is no “comprehensive assessment of materials suitability”, including maps showing sources and stockpile locations, and schedule of availability.
- details and scheduling for progressive reclamation, along with details of restoration scheduling and procedures for coordinating restoration activities within the mining sequence and a monitoring plan for progressive reclamation have not been provided.
- a description of post-closure ground water monitoring program is not provided.
- a restoration monitoring plan was to have been submitted to the MVLWB by February 2002 but has not been submitted yet.

The Tłı’chǫ intend to lead expert evidence at the public hearing respecting the current inadequacy and non-compliance of the A&R Plan.

One particular area we are concerned about is the proposed plan for closing the Processed Kimberlite Containment facility (tailings pond). The superficial description of covering the fine PK slimes in the center of the pond with a dome of waste rock poses a number of serious questions about how feasible this is. These questions should now have been answered by Diavik through field investigations of tailings behaviour. There is no evidence that Diavik is investigating the feasibility of options to close this facility.
As with other issues outlined above, the Tłı̨chǫ Government will make recommendations in this respect at the hearing, and believes that DDMI could redesign its A&R Plan so as to comply with the requirements of the License, if it retained and properly mandated qualified and independent experts for that purpose.

Term of the License

The Tłı̨chǫ Government opposes Diavik’s request for a term to last the end of mine life. We believe that seven years is the maximum term that should be considered. It is clear that a great deal can happen in seven years, if we look back at the changes that have occurred with this project since the License was granted. It is in the public interest to have a requirement for a full public hearing at least that often, to consider whether the proponent is in full compliance, as well as whether changes need to be made to the terms and conditions of the License.

Oversight and Enforceability of the License

A final problem is concerned with the enforceability of the Water License provisions. Water Licenses are the main mechanism by which these large industrial projects are authorized to proceed, and by which the environment is to be effectively protected. As a result, the licenses have many provisions in them which relate to environmental protection, including the need to have effective monitoring and mitigation plans in place, with annual reports and data submitted to demonstrate that environmental performance is adequate. The Tłı̨chǫ Government and other Aboriginal groups only support these projects on the basis that these conditions in the license will provide effective environmental protection.

The problem is that most of these license conditions are not enforceable. The inspectors responsible for ensuring regulatory compliance are not technically resourced to review the many reports and data sets that are submitted annually to the Board. There is apparently no one charged with ensuring that the work done is of acceptable quality. The Board has taken the position that reports required by the License are not to be approved by it.
Without the technical resources to review and enforce the terms and conditions of the License, the Tłı̨chǫ Government does not have confidence that the environment will be protected.

The Tłı̨chǫ will be reviewing this issue through evidence at the public hearing, and will make recommendations at that time for mechanisms and amended License terms for addressing this problem.

Thank-you for your attention to our submission.

In Tłı̨chǫ Unity,

Zabey Newatt,

Acting Director, Tłı̨chǫ Lands Protection Department
Facsimile Coversheet

To: Peter Lennie-Misgeld  From: Zabey Nevitt A/Director, Tłı̨chǫ Lands Protection Department

Fax: 873 – 6610  Pages: 8 + cover
Phone: 669 – 0506  Date: 11/18/05
Re: MV2005L2-0007  CC:

☑ Urgent  ☐ For Review  ☐ Please Comment  ☐ Please Reply  ☐ Please Recycle

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● Comments:

Please find attached comments on Diavik’s Water License Renewal Application
November 18, 2005

Bob Wooley
Executive Director
MVLWB
Box 2130
Yellowknife, NT
X1A 2P6

Re: EMAB Comments – Diavik Diamond Mines’ Application to renew Water Licence N7L2-1645 (re-numbered to MV2005L2-0009)

Dear Mr. Wooley,

The Environmental Monitoring Advisory Board (EMAB) wishes to provide comments on Diavik Diamond Mines’ (DDMI) application to renew its water licence N7L2-1645 (re-numbered to MV2005L2-0009). As requested in your letter of November 1, 2005, EMAB is proposing changes to wording in the water licence where applicable. In some cases we raise issues that must be addressed but cannot be directly dealt with through changes to the licence.

A. Participant funding & scheduling

Before addressing our specific comments on the licence and its administration we must highlight one of EMAB’s major concerns regarding the renewal application review. There is no funding under the MVRMA to provide for effective participation of Aboriginal Parties or the public in public hearings. Effective participation in such hearings requires significant resources for technical analysis and legal advice. **EMAB has been making recommendations about this to the Minister of DIAND for over 18 months (see attached letter) but there has not been any progress.** This issue was raised by community representatives from the Lutsel K’ee Dene First Nation and North Slave Metis Alliance at EMAB’s workshop on the DDMI water licence renewal review held November 8 & 9 in Rae-Edzo. Both expressed concern that they do not have sufficient resources to effectively prepare for the review and that it will be difficult or impossible for them to meet the current deadlines set out in the review process. This same issue was raised by Aboriginal interveners at the recent BHP Billiton water licence renewal hearings. **While EMAB does not speak on behalf of the Parties to the Environmental Agreement for the Diavik Diamonds Project (EA), we are very**
concerned that lack of funding may prevent some of them from participating effectively in the water licence renewal review, and potentially compromise the integrity of the review process. The Mackenzie Valley Land and Water Board (MVLWB) has a duty to safeguard the public interest and it is EMAB’s view that the MVLWB should raise this issue with the Minister.

B. Comments on the application

EMAB understands that comments on the application will provide the basis for technical sessions intended to clarify or resolve issues prior to the formal hearings now proposed for March 2006. We have tried to make our comments as comprehensive as possible; however we may raise additional issues in our written intervention.

EMAB contracted three independent expert reviews of specific components of the water licence as part of our preparation for the renewal review: the Aquatic Effects Monitoring Program (AEMP), the dust monitoring component of the AEMP and the Interim Abandonment and Restoration Plan (IARP). Our comments include the results of these reviews; we attach copies of the reviews for your information and use.

As mentioned EMAB discussed the application with Board members and Parties to the EA at a recent workshop and our submission takes into account comments from participants. However EMAB does not speak for any of the Parties and must make clear that this submission should not be taken as representing any of their views.

EMAB’s comments and specific wording changes are set out below:

1. **Part H: Ammonia Limits**

EMAB was pleased with the mediated agreement regarding DDMI’s requested amendment to its water licence and supports the continuation of the process envisioned in the current licence as amended, to be completed by September 2006.

1.1 Proposed change to Part H – *none*

2. **Part K: Aquatic Effects Monitoring Program**

It is EMAB’s view that the terms of the water licence generally provide for an adequate AEMP design, but that the current AEMP must be re-evaluated and redesigned to address the problems identified by independent experts and members of the Diavik Technical Committee (DTC) as outlined above and detailed, for example, in the North-South Consultants’ 2005 review of the AEMP conducted for EMAB (attached). We are pleased that the DTC recently initiated a process to review and revise the AEMP. However we must state that it is critical that the process for redesigning the AEMP provide for full and effective participation by the Aboriginal Parties to the EA and recommend that the MVLWB address this potential problem. EMAB suggests the MVLWB arrange for technical sessions
during or following the hearing process to address the re-design of the AEMP and make recommendations for a revised AEMP to the Board.

EMAB’s concerns include:
- problems with the baseline statistics (DIAND’s statistical consultant has reviewed the baseline data for certain parameters and concluded that it should not be used to generate trigger values)
- number of samples taken per year and some sampling methodologies,
- the four-step process used to assess change,
- seasonal trends not being taken into account
- lack of reference lake
- the methodology and results from the dust monitoring component
- ongoing QA/QC problems with annual reports
- relationship of report results to specific adaptive management responses
- enforceability of the AEMP

In addition EMAB notes that the EA includes commitments by DDMI to incorporate a number of components in its monitoring programs that are either not found in the current AEMP or not described in sufficient detail:
- consider traditional knowledge,
- establish or confirm thresholds or early warning signs,
- trigger action by adaptive mitigation measures where appropriate,
- provide opportunities for involvement or active participation of each of the Aboriginal Peoples in implementation, and
- provide training opportunities for each of the Aboriginal Peoples (clause 7.1).

It may be appropriate to require addition of these items to Part 7(K) of the water licence, or for Diavik to add them to the AEMP to meet its commitments. EMAB will propose wording changes that address some of these and comment briefly on the others.

2.1 Proposed changes to Part K:

Add the following clause:

*The licensee shall submit to the Board for approval within one year of the effective date of this licence a revised Aquatic Effects Monitoring Program, and every three years thereafter through the term of this licence or as directed by the Board to determine the short and long term effects in the receiving environment resulting from the project, to test impact predictions and to measure the performance of operations and effectiveness of impact mitigation.*

Add the following sub-clauses to the AEMP description (currently Part K(7)):
- *a description of how Traditional Knowledge will be collected and incorporated into the Aquatic Effects Monitoring Program* (an identical clause is in the renewed BHP water licence);
- *a description of how the data collected in the Aquatic Effects Monitoring Program will be used to establish or confirm thresholds or early warning signs*
Change the following clauses as per bolded words:

- Clause 7(f) – “A description of evaluation criteria for the Aquatic Effects Monitoring Program and the approaches to be used to annually amend and adjust the AEM program.”
- Clause 7(h)ii – “structure, abundance and productivity of phytoplankton, periphyton, zooplankton and benthic invertebrate communities”
- Clause 12 – “The licensee shall submit to the Board on an annual basis for approval the following information:”
- Clause 12(c) – “a scientifically defensible interpretation and discussion of the data including data collected as part of the snow quality surveys.”

EMAB’s expert reviewers of the AEMP and the dust monitoring component of the AEMP both found significant deficiencies.

**EMAB recommends that the Board direct that the AEMP revision process address each of the issues and recommendations in each of these reports while recognizing that parts of the dust monitoring review are beyond the scope of the AEMP.**

### 2.2 Additional Comments

#### 2.2.1 Ensuring AEMP reports submitted prior to renewal are complete and accurate

EMAB refers to the position that the MVLWB has taken in its June 2, 2005 letter to EMAB that unless the licence states that a report is “for approval” it does not have a duty to determine that the report complies with the licence requirements. EMAB understands the letter to mean that the MVLWB does not take responsibility to make sure there is a thorough technical review of the report or to require/request changes if such a report is inaccurate or incomplete. To address the MVLWB’s position EMAB has recommended that the annual AEMP reports require MVLWB approval in the renewed licence.

However EMAB states for the public record that it believes the MVLWB has a duty and responsibility to ensure a licensee complies with all requirements in a water licence. In the past the MVLWB has taken this approach with reports that are not “for approval” i.e. July 18, 2002 letter to DDMI indicating the MVLWB was deferring approval of the 2001 AEMP report pending its revision and resubmission.

On a related topic, EMAB is concerned that AEMP reports submitted prior to the licence renewal – for 2001 through 2004, as well as the upcoming 2005 report - were not for approval and that the position in the MVLWB’s June 2, 2005 letter means that any existing errors, inaccuracies or omissions in these reports may not be corrected for the public record. All the annual AEMP reports to date contain errors identified by the DTC and/or independent experts:

- the 2001 and 2002 AEMP reports contained errors that the DTC identified and recommended be corrected;
• although the 2003 and 2004 reports have not been officially reviewed by the
DTC some errors have been identified in them as well; and
• EMAB’s independent review of the AEMP’s dust monitoring component has
identified significant problems with the dust monitoring data for all years
reported.
The AEMP reports are a record of the data collected to monitor changes in Lac de
Gras and EMAB believes it is critical that each one be complete and accurate.

EMAB recommends that the MVLWB ensure that the annual AEMP reports
submitted prior to the water licence renewal be thoroughly reviewed and that
DDMI be directed to make any changes necessary to make them complete and
accurate. We further recommend that the revised reports also be reviewed to
ensure that the necessary changes have been made.

EMAB believes that the MVLWB has a duty, and authority, to determine compliance
of any report required by a water licence and recommends that the MVLWB
reconsider or clarify its position on this as stated in its June 2, 2005 letter.

2.2.2 Relationship between reports under water licence section K(7)i on Special
Effects Studies and similar studies under the Fisheries Authorizations

DDMI notes in the AEMP that four of the Special Effects Studies are linked to studies
required by Fisheries Authorizations issued by the Department of Fisheries and
Oceans. EMAB is informed that there was discussion at the DTC regarding the
protocol for approving Terms of Reference for the above studies, and for approval of
the final reports; however EMAB has been unable to locate a formal decision of the
MVLWB on this matter. EMAB understands that the MVLWB is having these studies
independently reviewed; however the submission and approval process to the
MVLWB does not appear to be documented.

EMAB recommends that the MVLWB formally state its decision in writing
regarding submission and approval of these reports.

2.2.3 Assessment of AEMP report results

The water licence does not require an adaptive response to the AEMP results, or even
an assessment (other than by DDMI) of whether there needs to be a response. The
AEMP does include an option for Diavik to recommend changes to the AEMP and to
do additional studies. It also notes that Diavik will continuously assess the need for
more mitigation but does not commit to any adaptive response to the AEMP results.

EMAB recommends a mechanism be established so the MVLWB can require
DDMI to develop a response to any detected change that will result in a
significant adverse environmental effect, to be implemented as and when
approved by the MVLWB.
2.2.4 Environmental Agreement commitments
EMAB is pursuing the fulfillment of the following commitments from the EA with DDMI as they relate to all DDMI monitoring programs, including the AEMP:

- a description of how the licensee will provide opportunities for involvement or active participation of each of the Aboriginal Peoples in implementation
- a description of how the licensee will provide training opportunities for each of the Aboriginal Peoples

EMAB appreciates any guidance the MVLWB can provide as to inclusion of these commitments in the AEMP through the water licence renewal process and requests that the MVLWB, to the extent possible, encourage DDMI to address these commitments in the revision process for the AEMP.

2.2.5 Enforceability of AEMP
EMAB members have raised questions about whether the AEMP, as defined in the water licence, is “enforceable” i.e. that the requirements can be tested to determine compliance while also meeting the intention of stakeholders. EMAB requests that the MVLWB provide guidance on enforceability and recommends that this topic be included in any discussions toward re-design of the AEMP as recommended above.

3. Part I: Abandonment and Restoration Plan

EMAB contracted an independent expert review of DDMI’s Interim Abandonment and Restoration Plan (IARP) and Restoration Research Plan (RRP) in preparation for the renewal review (see attached). The reviewer concluded that the IARP was not fatally flawed but was insufficiently detailed and made a number of recommendations for additional details that DDMI should be able to provide. He also indicated that the lack of detail would make accurate calculation of the security deposit difficult.

EMAB believes that the terms of the water licence provide for an adequate IARP but that the current IARP must be revised to address the issues raised by EMAB’s independent expert. In addition the MVLWB’s approval of the IARP in April 2002 includes four conditions to be met in updates to the report; however no formal updates have been submitted.

Part I(8) of the current water licence requires that DDMI submit a restoration monitoring program by February 1, 2002 to the Board for approval, to evaluate the effectiveness of all progressive reclamation. Section 7 and section 8 of the IARP each include short sub-sections on ecological monitoring however EMAB does not believe that this meets the terms or intent of Part I(8). EMAB has not been able to find this required program or any documentation of its being submitted.

Finally, EMAB notes that there is no requirement for DDMI to submit a Final Abandonment and Restoration Plan for approval or to provide a time period for submission of revisions (the BHP water licence requires a final plan to be submitted for approval at least 2 years prior to closure).
3.1 Proposed change to Part L:

Add the following clauses:

- "The licensee shall submit to the Board for approval within one year of the effective date of this licence a revised Interim Abandonment and Restoration Plan, and every three years thereafter through the term of this licence or as directed by the Board."

- "A minimum of twenty-four (24) months prior to closure the licensee shall submit to the Board for approval a Final Abandonment and Restoration Plan. The licensee shall submit any revisions to the Plan required by the Board within three months of receiving the Board’s notification."

EMAB’s expert reviewer of the IARP found significant lack of detail.

EMAB recommends that the MVLWB direct that the IARP revision process address each of the issues and recommendations in this report.

3.2 Additional Comments

Part L(1) of the current licence refers to the Board’s Guidelines for Mines in the Northwest Territories or subsequent editions and to the Dam Safety Guidelines. These references should be reviewed and updated or removed.

Revisions to the IARP may affect DDMI’s restoration liability and the security deposit.

The MVLWB should require DDMI to submit the required Restoration Monitoring Program at the earliest possible time.

EMAB recommends that the MVLWB convene technical sessions to review the revised IARP, once it is submitted, for the purpose of making recommendations for changes prior to approval.

4. Duration of Licence and Procedure to Initiate Amendments

Duration of the licence is also an issue. The current application is effectively for life of mine. Based on past experience EMAB is concerned that if any issues or problems arise it may be very difficult to amend the licence, or any of the plans and programs required by the licence, until the next renewal. Using the case of the AEMP as an example, members of the DTC, EMAB’s independent expert and the MVLWB’s independent expert all raised concerns about the ability of the AEMP to meet its objectives; however the MVLWB did not accept any recommendations for change because a decision had already been made and significant new evidence was not provided. MVLWB staff informed EMAB that the AEMP could only be revised during the water licence renewal process. If this remains the case then problems
identified after completion of the licence renewal process may not be addressed until the next licence renewal after the mine has completed its operations.

EMAB disagrees with this approach and does not believe it is in the public interest. It is understood that the AEMP, or any component of the water licence, should not be changed simply because a new opinion is expressed; however the MVLWB’s stated requirement that significant new evidence is required is too limiting. When concern is expressed by a number of credible experts based on technical review, the issues should be evaluated on their merit regardless of whether new information is submitted. In short, if problems are identified then they should be evaluated thoroughly and fixed as appropriate. Recognizing that mistakes can be made during the approval process, EMAB would like the renewed licence to allow for consideration of recommendations for change from stakeholders if they have good technical reasons ie. that the weight of evidence that a change is needed is substantially greater than that involved in the original approval.

**EMAB recommends that the MVLWB clearly identify the process by which the water licence can be amended and how this process can be initiated in the public interest by stakeholders such as Parties to the Environmental Agreement.**

**EMAB will provide further comment on the duration of the licence as part of its intervention at the formal hearing.**

I trust you will find these comments useful and look forward to hearing from you, and to participating in the upcoming technical sessions.

Sincerely

Doug Crossley

Doug Crossley
Chair

Cc EMAB members (by email)
- Parties to the Environmental Agreement
- Hon. Andy Scott, Minister of DIAND
- Diavik Technical Committee (via Chair)
Kitikmeot Inuit Association

MEMO

To: Bob Wooley, MVLWB
From: Donald Haviyak, President, KIA
Date: November 18, 2005
Re: KIA Comments – Diavik Diamond Mines’ Application to renew Water Licence N7L2-1645

CC: Geoff Clark, Jack Kaniak, Fred Elias

Dear Mr. Wooley,

The Kitikmeot Inuit Association (KIA) is submitting our comments on the Water License Renewal Application for the Diavik Diamond Mine Inc. (DDMI). The KIA has important responsibilities to Kitikmeot Inuit to balance economic development with environmental protection, and to protect the land, water, wildlife and Inuit lifestyles. DDMI is located on Lac de Gras at the headwaters of the Coppermine River, which flows into Nunavut and terminates at Kugluktuk. Kugluktuk Inuit drink water from the Coppermine River. Thus KIA has a strong interest in assuring the environmental interests of beneficiaries of the Nunavut Land Claims Agreement in the Kitikmeot region of Nunavut are served. Further, KIA has always been an active participant in the regulatory processes of DDMI and is a Party to the Environmental Agreement signed between Kitikmeot Inuit, DDMI, governments, and other aboriginal Parties. As part of the Environmental Agreement, KIA is actively involved with the Environmental Monitoring Advisory Board (EMAB) of DDMI and has been aware of the upcoming Water License Renewal for DDMI.

KIA participated in a workshop sponsored by EMAB Nov 8-10, 2005 in Rae, NWT. At this workshop EMAB presented independent reviews of DDMI’s Aquatic Effects Monitoring Program (AEMP), Interim Abandonment and Restoration Plan (IARP), and the dust monitoring components of the AEMP. KIA told EMAB that that the issues raised by the independent consultants presented important requirements for change to the AEMP, IARP, and the dust monitoring program. KIA directed EMAB to intervene to the MVLWB on these issues and KIA fully supports EMAB’s position on these matters. KIA anticipates that EMAB will play an important role in the DDMI water license renewal process and EMAB will keep KIA updated of their position. KIA does
not expect to be greatly involved as an intervener in this renewal application as long as EMAB continues to represent the views of KIA.

KIA would like to make two comments on the water license application, separate from those of EMAB. The first is that the company is requesting a longer term of license than the current license. KIA believes that many uncertainties remain regarding the potential for underground mining at the mine and that it would be imprudent to approve a license longer than the current term. As well, in seven years, the footprint and operations of the mine will have matured considerably, and the next renewal would be a good opportunity to re-evaluate and finalize to the extent possible, the Abandonment and Restoration Plan.

Secondly, it is also KIA's understanding that the current annual AEMP report is a 'not for approval' document, and although there have been concerns raised by independent reviews from INAC and the MLWCB in the past, there is no leverage to deal with these concerns until the time of license renewal. This should not be allowed to continue. The AEMP should be 'for approval' by regulatory agencies and, if necessary, include changes prescribed by the regulators that if not followed will result in significant consequences to DDMI.

Sincerely,

[Signature]
Donald Haviyak
President, Kitikmeot Inuit Association
Kitikmeot Inuit Association
Cambridge Bay, Nunavut
867/983-3458
FAXIMILE TRANSMISSION
COVER SHEET

To: Bob Wooley

Date: Nov/18/05

Fax: 867 873 6610

☐ Jack Kaniak, KITIA Lands Manager - ijaniak@qiniq.com
☐ Stanley Anablak, KITIA Lands Officer - sanablak@qiniq.com
☐ Mona Tiktalee, Community Liaison Officer/Lands Clerk - monat@qiniq.com
☐ Geoff Clark, Environmental Screener - geoffc@qiniq.com
☐ Jimmy Ross Miyok - Employment & Training Officer - jimivok@qiniq.com

Number of pages to follow: 3

This fax sent by: G.C. If you have not received all pages
please call (867) 982-3310 or 4010

Comments: Comments from KIA on

DM1 water license renewal

Affiliates: Nunavut Tunngavik Inc., Inuit Tapirisat of Canada, Kitikmeot Corporation
I have reviewed Water License Renewal Application MV2005L2-0009 and have no comments at this time. These are submitted from the Environmental Health Office with the Stanton Territorial Health Authority.

Tanja Rarog  
Environmental Health Officer  
Stanton Territorial Health Authority  
1st Floor Diamond Plaza, 5204-50th Avenue  
Yellowknife, X1A 1E2  
Phone: (867) 669-6722  
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E-mail: tanja_rarog@gov.nt.ca
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Friday, October 21, 2005 1:03 PM
To: 'Tony Pearse'; colleen_roche@gov.nt.ca; geoffc@polarnet.ca; Anne Wilson; Bart Blais; 'Dave Balint'; 'Dora Enzoe'; Eric Yaxley; 'Gord MacDonald'; 'John McCullum'; Kathleen Racher; 'Kelly Cott'; Lorne Napier - Rae Edzo Mets Local; 'Monica Krieger'; MVLWB Permit Email (MVLWB Permit); Nathan Richea; 'Rachel Crapeau'; 'Sheryl Grieve'; 'Stanley Anablak'; Stephen Ellis; 'Tim Byerses'; Tli Cho Lands Protection Department; 'Nam Lee'; 'Don MacDonald'

Subject: WL review comments from DIAND

DIAND review comments attached.
October 14, 2005

Mr. Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
7th Floor - 4910 50th Avenue
P.O. Box 2130
Yellowknife, NT, X1A 2P6

Dear Mr. Lennie-Misgeld:

Thank you for letter of September 9, 2005 in which you ask for comments on Diavik Diamond Mines Inc. (DDMI) application to the Mackenzie Valley Land and Water Board (MVLWB) for a renewal of their Type "A" water license (new reference MV2005L2-0009). Our understanding is that your letter initiates the beginning of a longer water license application review process. This process will involve a number of steps that provide opportunities to identify potential issues, promote multi party discussions which could lead to the resolution of issues and/or final interventions for discussion during a public hearing, and for the MVLWB's consideration.

At this time INAC has a number of issues regarding the water license application that we think merit further discussion. These include:

- baseline information as it relates to the Aquatic Effects Monitoring Program (AEMP) and Limnology Report.
- modifications and/or additions to the AEMP which may require additional monitoring and/or reporting activities,
- the reevaluation of Environmental Assessment (EA) water quality thresholds,
- the review and approval process for plans, programs and associated reports, and,
- the proposed duration of the water license.

The attached Appendix provides additional background and a brief overview of our rational for identifying these issues. We will provide our final comments and recommendations for specific change to the water license as required in our intervention, and at the public hearing presently scheduled by the MVLWB for the beginning of February 2006.
If you have any questions or require further information please call me at (867) 669 - 2647.

Sincerely,

David Livingstone, Director
Renewable Resources & Environment

Attachment

cc. Ed Hornby
    Denise Mazur
    Kathleen Racher
    Eric Yaxley
Appendix

Preliminary Issues Identification - DDMI Water License Identification
(Water License MV2005L2-0009)

Baseline Information

The Water Resources Division (WRD), INAC has been involved in the review of the baseline water quality parameters DDMI had submitted in their Compilation of Baseline Data, 2000. This review along with an independent reviewer’s analysis has yielded a number of concerns, a few of which include:

1. Data has been presented with many errors (labelling, transferring, etc.)
2. Data has been combined (duplicates, subsamples, etc.),
3. Data has been mixed (field and lab results, total-extractable-dissolved, etc.), and,
4. Data may not be adequate to accurately define baseline conditions and allow for the natural variability, both annual and cyclical in Lac de Gras.

“The combination of the issues noted above results in unreliable findings in the AEMP and Limnology Report inhibiting the identification of effects or changes in Lac de Gras.”

Aquatics Effects Monitoring Program

The WRD has also been reviewing the intent and purpose of the AEMP, including the establishment of trigger values as Step 1 of the analytical analysis of effects. The Diavik Technical Committee (DTC) and DDMI have agreed that the trigger values need to be further investigated and reset. A few of our issues with the trigger values and the present AEM program include:

1. Potential changes in water quality by season not acknowledged by the current trigger values,
2. The requirement for only 2 samples per year when it is apparent that seasonality exists,
3. Trigger values are treated as fixed when they likely fluctuate with time,
4. The requirement of three consecutive measurements exceed the trigger value,
5. A trigger value set at the 75th percentile allows for a net loading in Lac de Gras,
6. The decision Part 2 of Rule #1 may allow for as much as 2 - 4 years of increased loading at greater than the 75th percentile of baseline before action is taken,
7. In some cases trigger values are estimated from a baseline sample that has more than 75% of the values less than laboratory detection,

“The combination of the issues noted above results in unreliable findings in the AEMP, and inhibits the identification of potential effects or changes in Lac de Gras over time.”
Environmental Assessment (EA) Water Quality Thresholds

The Water Resources Division has conducted a review of the EA water quality thresholds as identified during the mines Environmental Assessment. The thresholds appear to be outdated and do not incorporate the most up to date CCME guidelines, and/or baseline information. Please note the EA thresholds are directly related (Step 3) of a 4 Step process to identify effects in Lac de Gras.

"The now outdated thresholds may not properly protect the aquatic environment and potentially jeopardize the long term aquatic conditions within Lac de Gras."

Plans and Programs

Further clarification is required for Items for Approval in the previous water license, especially the review and approval of plans, programs and reports. One perspective is that all plans, programs and reports should be reviewed and approved. It is important to have a process which determines that a report is in compliance with the requirements/terms of the water licence (i.e. Part K, Item 4 - Limnology Report). Additional guidance documents or more specific terms for plan and program review may be appropriate in the renewed licence.

Further discussion would also be useful to clarify appropriate water related issues for inclusion in the water license versus inclusion in other regulatory instruments, and to better coordinate the submission and approvals of plans, programs and reports (i.e the Abandonment and Reclamation Plan).

"Discussion on the role and function of the Diavik Technical Committee (DTC) in the review of plans and programs would be useful as discourse has resulted in some items being recommended for approval and others not being approved at all (i.e. Limnology Report). Agreement is also needed on how regulators and the DTC deal with Items that are stamped by an Engineer."

Duration of License

The technical and process issues raised above would suggest that the duration of any renewed water license needs further discussion.
FACSIMILE TRANSMISSION

DIAND
David Livingstone, Director
Renewable Resources and Environment
Indian & Northern Affairs Canada
P.O. Box 1500, Yellowknife NT X1A 2R3
Internet: livingstoned@inac.gc.ca
Tel.: (867) 669-2647
Fax.: (867) 669-2707

Date: October 14, 2005
To: Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
Fax: 873-6610
Pages: 5, including cover
Comments: 
October 7, 2005

Regulatory Officer
Mackenzie Valley Land and Water Board
7th Floor – 4910 50th Avenue
P.O. Box 2130
Yellowknife NT X1A 2P6

Dear Peter Lemme-Misgeld:

Diavik Diamond Mines Inc. – Mining and Milling, Lac de Gras
MV2005L2-0007
Water License Renewal Application

Thank you for your letter of September 19, 2005, in respect of this project requesting our comments by October 14, 2005, please be informed that while this is a highly important file to our organization, we feel we must point out some troubling aspects regarding same.

As the project commenced in 2000, we were not involved with the project in any way.

However, since that time, the NWTMN signed an Interim Measures Agreement (IMA) with Canada and the Government of the Northwest Territories on June 22, 2002. Section 3.1(a) of the IMA also establishes a responsibility to consult should any application or development occur outside the IMA area, that will have an adverse effect on our interests within the IMA area.

The IMA clearly sets out the process and procedures for pre-screening applications. In section 1.3 of the Agreement – “Canada and the NWTMN will enter into discussions concerning the provision of funding to the NWTMN to implement the Agreement.”

As of this date the NWTMN has not received funding for IMA related activities in this fiscal year nor have we been able to acquire the capacity to engage in consultations.

Another disturbing factor regarding the project is that no agency has taken the responsibility to consult the NWTMN regarding this project and, it would appear that no agency has taken the responsibility to inform Diavik that their activity is less than 30 kms from our IMA boundary. Subsequently, it is not surprising that Diavik has not contacted the NWTMN to discuss their renewal application.
This letter is also to inform you of several pertinent facts:

- The Northwest Territory Métis Nation (NWTMN) is currently at the table negotiating a lands and resources Contract with Canada and the GNWT.

- The proposed Diavik project falls within NWTMN traditional territory.

- A map delineating the (NWTMN) traditional territory will be tabled at the negotiating main table next and will subsequently become a public document.

We at the Northwest Territory Métis Nation (NWTMN) have always been pleased with the comprehensive definition of consultation found in the Mackenzie Valley Resource Management Act (MVRMA):

3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, the power or duty shall be exercised

   (a) by providing, to the party to be consulted,
      (i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,
      (ii) a reasonable period for the party to prepare those views, and
      (iii) an opportunity to present those views to the party having the power or duty to consult; and

   (b) by considering, fully and impartially, and views so presented.

We take this opportunity to reiterate your definition of consultation in light of two recent landmark rulings in the BC Court of Appeal that held that the provincial government (Crown) has a duty to properly consult First Nations before proceeding with development on potential treaty settlement land. (It should be noted here that the NWT Métis Nation falls under the definition of “first nation” in the MVRMA under the heading of “interpretation.”)

The BC Court said First Nations do not have to prove their title to the land before this consultation takes place. One of the Court decisions held that third parties (the developers) also have the duty to consult.

On February 27, 2002, the Court ruled that the provincial government and the developer did not properly consult the Council of the Haida Nation when renewing a tree farm licence. The Court further held that a legally enforceable duty to consult will continue until Haida title and rights are determined by a treaty or by a Court.

The Haida decision followed a January 31, 2002 decision by the Court of Appeal in the Taku River Tlingit case. In that case, the Court ruled that the province must consult Taku River Tlingit First Nation before they re-issue a project permit to a developer to reopen the Tulsequah Chief Mine in northwestern B.C.

In Haida, the Court referred to the compelling case the Haida had to aboriginal title in the Queen Charlotte Islands as requiring the duty to consult. In Taku, the Court referred to the aboriginal interests expressed at the treaty table as evidence of Taku’s interest.
We believe that these examples of recent Case Law are pertinent to our current situation. A development is being proposed in our traditional territory and we have not been consulted or included in any initial discussions regarding the potential impact said development may have on our traditional lands.

In light of the above, we have no option but to request more time to consider the proposal and enter into discussions with the proponent regarding the proposed activities and what impacts such activities might have on our traditional territory.

The NWTMN bases its position on the grounds that:

- The application indicates there is potential for environmental impacts. The NWTMN has not been informed of the nature and extent of environmental impacts as a result of the proponent’s proposed activities in our traditional territory.
- The NWTMN has not been informed of the cumulative loss to Métis resources should this project continue.
- The NWTMN has not been afforded an opportunity to assess the impacts on Métis heritage resources presented by the proposal.
- The activity is within NWTMN traditional territory, necessitating a meaningful consultative process and accommodation of NWTMN concerns. See cited jurisprudence above.

As an initial measure, we propose that the Mackenzie Valley Land and Water Board instruct Diavik to consult the NWTMN with respect to the application so that we can be apprised of the full environmental implications of the project.

The NWTMN would then be in a position to respond the Board in a fully informed and confident manner and perhaps enter into direct communications with Diavik regarding the activities within our traditional territory.

Sincerely,

[Signature]

Chris Heron
A/Interim Measures Agreement Coordinator

c. NWTMN IMA Committee
   All Metis Councils
   Hon. Ethel Blondin-Andrew, MP, PC, Western Arctic
   Hon. Joe Handley, Minister of Aboriginal Affairs, GNWT
Northwest Territory Métis Nation

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From:  Chris Heron

Mackenzie Valley Land and Water Board  NWTMN IMA Office

Fax:   867-873-6610
Phone:

Pages: 4 including cover

Date: October 11, 2005

Re:   Diavik Diamond Mines Inc. – Mining and Milling, Lac de Gras

MV2006L2-0007 – Water License Renewal Application

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