



13 October 2020

Diavik Diamond Mines (2012) Inc.
300, 5210 50th Avenue
Yellowknife, NT X1A 2P8

Water Licence
W2015L2-0001

Attn: Mr. Richard Storrie – President and Chief Operating Officer

Re: **Letter of Warning** – Waters Act – Offences to Type A Water Licence - Section 71(1)(a).

Mr. Storrie,

This Letter of Warning is in relation to a failure to provide written notice to both the Wek'eezhii Land and Water Board (WLWB) and the Inspector regarding construction activities pertaining to modification of the Processed Kimberlite Containment Facility (PKCF) Phase 6 Spillway for Diavik Diamond Mines 2012 Inc. (DDMI).

Though DDMI provided the subject letter "[DDMI Response to Reviewer Comments re: Diavik – PKC Facility Plan – Version 5.0](#)" to the WLWB, dated July 8, 2020, which states "During freshet 2021 there will be an increased risk and before this time DDMI will have modified the spillway and put in place the mitigation plan", which provides both transparency and intent to make modifications. DDMI also stated "This updated spillway design will be submitted to the WLWB under Part G of the Licence", which did not occur until after construction commenced. Therefore, after review of correspondence leading up to the conversation between the Inspector and DDMI on October 6, 2020, whereby it was stated that work on the spillway was underway, it has been determined that DDMI failed to provide written notification regarding a modification to Engineered Structures related to water use, which violated conditions of Water Licence W2015L2-0001, specifically:

Part G: Conditions Applying To Construction – Items #1 and #2:

- 1. The Licensee may, without written approval from the Board, carry out Modifications to Engineered Structures related to water use and Waste disposal provided that such Modifications are consistent with the terms of this License and the following requirements are met:*

- a. *The Licensee has notified the Board in writing of such proposed Modifications at least forty-five (45) days prior to beginning the Modifications;*
 - b. *The Modifications do not place the Licensee in contravention of either the License or the Act;*
 - c. *The Board has not, during the forty-five (45) days following the notification of the proposed Modifications, informed the Licensee that review of the proposal will require more than forty-five (45) days;*
 - d. *An Inspector has confirmed the acceptability of the proposed Modification to the Board in writing, and;*
 - e. *The Board has not rejected the proposed Modifications.*
2. *Modifications for which all of the conditions referred to in Part G, Item 1, have not been met may be carried out only with written approval from the Board.*

It should be noted that reasonable grounds exist to believe that DDMI violated section 71(1)(a) of the *Waters Act*, whereby “Every type A licensee is guilty of an offence who contravenes or fails to comply with any condition of the licence, if the contravention or failure to comply does not constitute an offence under section 75” and could potentially be charged for non-compliance in meeting terms and conditions of the Water Licence. Furthermore, punishment under section 71(2) of the Act states *Every licensee who commits an offence under subsection (1) is liable on summary conviction,*

- (a) For a first offence, to a fine not exceeding \$250,000 or to imprisonment for a term not exceeding one year, or to both, and*
- (b) For a second or subsequent offence, to a fine not exceeding \$500,000 or to imprisonment for a term not exceeding one year or to both.*

The Government of the Northwest Territories – Department of Lands does not intend to proceed with any further actions for this specific incident, taking into account DDMI was well intentioned, and the work being conducted is unlikely to cause any adverse environmental impacts, and that the work is of benefit in avoiding a breach if freshet 2021 provides for a 1 in 500 year event. DDMI must be aware that in the future any similar incidents by which failure to provide written notification for modifications that result in violations of the Water Licence or other statutory obligations may result in legal recourse pursuant to the *Waters Act*.

In conclusion, the Inspector does recognize efforts to rectify the oversight and appreciates the professionalism demonstrated by DDMI staff in explaining the circumstances of the incident. It is believed that continued communication and transparency will help to maintain conformance with the Water Licence conditions and avoid similar circumstances going forward.

If you have any questions or concerns please contact the undersigned at (867) 767-9187 extension 24196.

Thank you for your cooperation.

Sincerely,



Tom Bradbury
Resource Management Officer III
GNWT-Department of Lands
North Slave Region
tom_bradbury@gov.nt.ca

Cc:

Mr. David Patterson – HSE Business Partner, Diavik Diamond Mines (2012) Inc.
Mr. Kofi Boa-Antwi – Superintendent, Environment, Diavik Diamond Mines (2012) Inc.
Ms. Anneli Jokela – Regulatory Manager, Wek'èezhìi Land and Water Board
Ms. Cassandra DeFrancis – Regulatory Specialist, Wek'èezhìi Land and Water Board
Mr. John McCullum – Executive Director, Environmental Monitoring Advisory Board
Mr. Jamie Steele - Manager, Diamond Resource Management, GNWT-Lands
Mr. Scott Stewart – Regional Superintendent, Operations – GNWT-Lands