

**Considerations Regarding the Establishment of an
Environmental Monitoring Committee
for the Giant Mine Remediation Project**



a discussion paper prepared for the Giant Mine Oversight Working Group

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Executive Summary

The Giant Mine is a former gold mine located within Yellowknife city limits. The mine operated for over fifty years, during which time some 237,000 tonnes of arsenic trioxide dust, a by-product of the ore roasting process, was stored underground in huge mined-out chambers and vaults. Considerable surface disruption resulted from the operation as well, including extensive arsenic-contaminated tailings ponds, decrepit buildings, open pits and adits.

Following the bankruptcy of the owner of the Giant Mine in 1999, the federal department of Aboriginal Affairs and Northern Development Canada (AANDC) and the Government of the Northwest Territories (GNWT) became jointly responsible for the site. In 2007 AANDC and the GNWT applied for a water licence to carry out a remediation plan intended to address surface remediation and arsenic trioxide management (perpetual care).

In March 2008, the City of Yellowknife (the City) referred the water licence application to the Mackenzie Valley Environmental Impact Review Board for environmental assessment. In May 2009, the Review Board issued terms of reference for the environmental assessment. One of the consistent themes raised by the Aboriginal and public parties to the Giant Mine Remediation Plan Environmental Assessment has been the need for independent monitoring of project implementation. The Review Board has on several occasions emphasized that proponents must address the issue of public consultation and trust, including the role of an oversight mechanism.

On March 6-7, 2012, Alternatives North (AN) and the Yellowknives Dene First Nation (YKDFN) jointly hosted a workshop to explore definitions and concepts for arms length monitoring of the Giant Mine Remediation Project. One outcome of the workshop was agreement to strike a small working group with representation from AANDC, GNWT, the City, YKDFN and AN to further explore the context and process for the possible establishment of an arms-length monitoring committee. The discussions of the working group were confidential and without prejudice to subsequent decisions regarding possible next steps.

The working group met by telephone and in person from March through May 2012. It quickly determined that there was sufficient common ground regarding the need for an arms-length environmental monitoring committee for the working group to continue its exploratory discussions. The working group agreed that such a committee would fill an important role in gaining public trust in the remediation project, something that AANDC and the GNWT, given their multiple roles, would be challenged to deliver.

Public concern regarding the multiple roles played by government and the need for some form of arms-length monitoring has been, and continues to be, a central issue in the environmental assessment. As project proponents, the respective ministers are “responsible ministers” for the purpose of the environmental assessment, have special responsibilities for Aboriginal peoples and are responsible for ensuring that the terms of regulatory authorizations are met. In the case of AANDC, the Minister is also responsible for approving the water licence recommended by the Mackenzie Valley Land and Water Board and for inspections to ensure that licence terms and conditions are met.

The working group then focused its attention on guiding principles, functions, structure and an establishment process for such a committee, again without prejudice to future decisions by the parties regarding its possible establishment. The working group followed a consensus-based approach throughout its deliberations.

The working group has concluded that it is in the individual and collective best interests of the parties and the public that a Giant Mine Remediation Project Environmental Monitoring Committee be established prior to the initiation of the Project. The Committee would be representative of the public and would monitor implementation of the environmental aspects of the Giant Mine Remediation Project.

Specifically, the Environmental Monitoring Committee would be mandated to:

- provide independent advice on environmental matters related to the Project;
- ensure that its advice regarding the remediation and perpetual care of the Giant Mine site assists the proponents in proceeding in a manner which minimizes environmental harm and risks, maximizes environmental benefits and opportunities and builds public confidence in the project; and
- establish and maintain effective communications among all parties and with the general public regarding the remediation and perpetual care of the Giant Mine site, to build a broad understanding of the activities underway and planned, and consequently to enable public confidence in the Project.

The functions of the Environmental Monitoring Committee would include:

- enabling effective communications among the parties and the public including annual reporting by, and financial accountability of, the Environmental Monitoring Committee;
- parallel to monitoring Project implementation, encouraging research to further explore environmentally safe and secure, cost-effective treatment options that could obviate the need for perpetual care and maintenance of the arsenic trioxide stored underground at the Giant Mine;
- maintaining “institutional and societal memory” related to the Project;
- reviewing the design of environmental monitoring programs and environmental management plans, including perpetual care plans, and the outcomes or results of those programs and plans (i.e. taking on some of the independent review and community interface functions envisioned in the proponents’ plans for an Environmental Management System);
- monitoring commitments made by Canada and the GNWT during the environmental assessment that are not contained in regulatory instruments; and
- creating and maintaining public confidence in the Project through open, effective and unbiased communications and the provision of independent advice to support sound environmental management.

The Giant Mine Remediation Project Environmental Monitoring Committee would not make decisions with respect to the operations of the project. Operational responsibilities and decisions would remain with the proponents.

The Environmental Monitoring Committee would be:

- established pursuant to a binding agreement among the signatory parties;
- independent of the parties;

- advisory to the parties; and
- established as a registered non-profit society in the NWT.

The Environmental Monitoring Committee would have:

- secure, adequate long-term funding provided by government, by project phase and as those phases are approved; and
- secure tenure for the life of the Project, recognizing that changes to the Environmental Monitoring Committee's mandate and budget may be appropriate as the Project moves from site remediation to long-term operation and maintenance (perpetual care).

The budget for the Environmental Monitoring Committee would be reviewed on a regular basis and linked to the phases of the Project. Budget requirements for the Environmental Monitoring Committee might be of the order of \$250,000 - \$400,000 per year for the initial 5 years and would diminish significantly as the Project moves from remediation to long-term operation and maintenance. The funding formula, the ability of the Committee to access independent expertise, the budget review process and the budget arbitration mechanism remain to be determined.

The Environmental Monitoring Committee would be composed of five (5) independent members. They would be residents of the Yellowknife area, including N'dilo and Dettah, and be selected through a public process. Selection of Committee members would be based on knowledge of the Project, the concerns of the residents and the technical and environmental issues associated with the Project, objectivity regarding the Project, and an understanding of the positions and interests of affected groups, particularly the YKDFN.

The working group recommends that the parties, in the context of the Information Request issued by the Environmental Impact Review Board, collectively advise the Board by June 11, 2012 as to the status of their discussions and the next steps.

If there is agreement to continue discussions toward the establishment of an Environmental Monitoring Committee the parties should, in the context of the technical submissions due July 11, 2012, update the Review Board as to the status of those discussions including, if possible, an agreement-in-principle.

Finally, if the parties have agreed to move forward, they should be in a position to confirm with the Review Board at the September 2012 public hearing their firm commitment to establish a Giant Mine Remediation Project Environmental Monitoring Committee and to ensure that it will be fully operational prior to the initiation of the Project.

Considerations Regarding the Establishment of a Giant Mine Remediation Project Environmental Monitoring Committee

1.0 Background

The Giant Mine is a former gold mine located within the city limits of Yellowknife. The mine operated for over fifty years, during which time some 237,000 tonnes of arsenic trioxide dust, a by-product of the ore roasting process, was stored underground in huge mined-out chambers and vaults. Considerable surface disruption resulted from the operation as well, including extensive arsenic-contaminated tailings ponds, decrepit buildings, open pits and adits. A stream flows through the property, discharging into Great Slave Lake and carrying with it contaminants of concern.

In 1999, after the company that owned Giant Mine went into receivership, the Giant Mine was transferred to the federal Department of Indian and Northern Affairs Canada (now Aboriginal Affairs and Northern Development Canada (AANDC)). AANDC and the Government of the Northwest Territories are jointly responsible for the site and have proposed a plan to address the environmental concerns on site, including both surface remediation and management of the arsenic trioxide stored underground. In 2007 AANDC and the GNWT applied for a water licence to carry out the remediation plan.

In March 2008, the City of Yellowknife referred the water licence application to the Mackenzie Valley Environmental Impact Review Board for environmental assessment. The referral was based on the potential that the project would have significant adverse environmental effects and because of significant public concern. The referral also noted concerns about the multiple roles government would play in the remediation project. In May 2009, the Review Board issued terms of reference for the environmental assessment, noting that the key issues included containment of the arsenic trioxide and long term (indefinite) monitoring and maintenance of the site.

One of the consistent themes raised by the Aboriginal and public parties to the Giant Mine Remediation Plan Environmental Assessment has been the need for independent monitoring of the implementation of the project and perpetual care. There is widespread recognition of the multiple, and potentially conflicting, roles played by the developers - the Government of Canada (represented by AANDC) and the GNWT (represented by the Department of Environment and Natural Resources). As project proponents, the respective ministers are "responsible ministers" for the purpose of the environmental assessment, have special responsibilities for Aboriginal peoples and are responsible for ensuring that the terms of regulatory authorizations are met. In the case of AANDC, the Minister is also responsible for approving the water licence recommended by the Mackenzie Valley Land and Water Board and for inspections to ensure that licence terms and conditions are met. Public concern regarding the multiple roles played by government and the need for some form of arms-length monitoring has been, and continues to be, a central issue in the environmental assessment.

The Review Board is aware of this concern and in the May 2009 terms of reference it required Canada and the GNWT to "describe any plans the developer has to continue public consultation and involvement during implementation of the project and afterwards, with particular regard to reporting monitoring results and adaptive management and a

description of how public complaints will be addressed and the dispute resolution process” (s. 3.2.6).

On March 6-7, 2012, Alternatives North and the Yellowknives Dene First Nation jointly hosted a workshop to explore definitions and concepts for oversight related to the Giant Mine Remediation Plan and its implementation. The report of the workshop was subsequently submitted to the Review Board

(http://www.reviewboard.ca/upload/project_document/EA0809-001_Report_from_Alternatives_North-Yellowknives_Dene_First_Nation_Workshop_on_Oversight_of_Giant_Mine_Remediation_Project.PDF).

One outcome of the workshop was agreement among the parties present that a small working group would be struck to further explore the context and process for the possible establishment of an environmental oversight committee for the Giant Mine Remediation Project. The parties (AANDC, GNWT, City of Yellowknife, Yellowknives Dene First Nation and Alternatives North) agreed that each would identify a representative for this working group.

Participants at the workshop agreed that clear terminology is essential if they are to come to agreement on the establishment of an oversight committee. In particular, the term “independent oversight” needed clarity. **Oversight** can be defined as monitoring the actions of decision makers. It does not include the power to make decisions with respect to the operations of the project. Operational responsibilities and decisions remain with the proponent. Oversight can inform decision making and help to ensure public confidence by providing transparency to the decision-making process.

A body that is fully **independent** has guaranteed existence or legal tenure, assured funding, and clear procedures for appointment, including removal. The body, and its members, act at arms length from the appointing parties and do not represent them. Independent oversight of a project does not imply management of the project by the oversight body.

The Review Board had set an April 16, 2012 deadline for the submission of technical reports by the parties to the Giant Mine Remediation Project; the public hearing was to be held in early June, 2012. On April 13, 2012 the Review Board, at the request of the Yellowknives Dene First Nation, granted an extension to the deadline for the submission of technical reports to July 11, 2012 and re-scheduled the public hearing to September 11-14, 2012. In reference to the concerns raised related to public oversight, the Review Board stated:

“The Board strongly encourages the developer and parties to use the additional time to work together to reach agreement on outstanding issues such as project oversight, a perpetual care plan (including stable funding) and the key details of the environmental management plan.”

On May 7, 2012 the Review Board issued three more Information Requests, including one on progress towards independent oversight, as follows:

Considering the history of the site and its proximity to N'Dilo, Dettah and Yellowknife, and the requirement for active management of the site forever, **public trust is a fundamental part of community acceptance for this project.** The Review

Board is interested in progress towards an agreement on an oversight mechanism to address this issue.

Request

- 1) Please describe the current areas of agreement and disagreement in the ongoing discussions regarding oversight.
- 2) Please describe your rationale for the areas where there is disagreement.

The Review Board has requested a response from AANDC, YKDFN and AN to this Information Request by June 11, 2012.

The Review Board can come to one of several conclusions at the end of its environmental assessment of the Giant Mine Remediation Project. It may recommend that the project proceed to regulatory permitting and licensing subject to certain measures; it may recommend that the project be rejected because the environmental effects (including related social concerns) of the project would be unacceptable; or it may recommend that the project be referred to environmental impact review by an independent panel for more detailed examination of outstanding issues including significant environmental effects or public concern. Given the potential for referral to impact review on the basis of public concern, the parties recognize that resolving the issue of environmental oversight prior to the conclusion of the environmental assessment is in their respective and collective best interests.

2.0 The Purpose of “Oversight” Agencies

“Oversight” agencies have been established in many jurisdictions as a means of ensuring public confidence in the actions of government agencies or industry through expert, independent monitoring of their operations and activities. A review of oversight agencies and their operations was conducted by Affolder et al for Alternatives North (Independent Environmental Oversight. A report for the Giant Mine Remediation Assessment. February 2011. Dr. Natasha Affolder, Katy Allen and Sascha Parul, Faculty of Law, University of British Columbia). The report can be found on the Review Board’s website at:

http://www.reviewboard.ca/upload/project_document/EA0809-001_Independent_Environmental_Oversight_Report_1328898833.PDF.)

Oversight agencies in Canada range in form and function, including the offices of the Auditor General of Canada, the independent scientific panels established for the Oilsands Monitoring Program, the external Technical Advisory Committee created for the Britannia Mine remediation monitoring program and comprised of local stakeholders, agency staff and mining industry technical experts, the arms-length Institute for Environmental Monitoring and Research established to monitor NATO low-level flights over Labrador and Quebec, and the independent environmental monitoring agencies established by governments and industry for the diamond mining operations in the NWT.

Oversight agency roles vary with the particular circumstance at hand but generally include monitoring the performance of proponents and regulators, representing public concerns and interests, enabling public concerns to be brought to the attention of proponents and regulators, providing timely public advice, evaluating overall project

effectiveness and being responsible for full and open communications among all involved parties. Technical expertise and communications expertise are essential if an agency is to do well and to be acknowledged as doing well. Both ingredients are necessary if an oversight agency is to meet the dual objectives of assisting the proponent and assisting the public.

Successful oversight agencies can be beneficial to all parties in many ways, including advising on improvements to technologies, identifying gaps in environmental monitoring and management and reassuring the general public that the project is proceeding safely and effectively. They can provide assurances that the proponents can not. If the agency is seen to be independent of vested interests, communicates well with the public and among the parties, is seen to be reliable and to have integrity with regard to technical issues, it can help to gain public confidence in the project at hand. Resources invested in proper oversight can result in more efficient regulatory processes and eliminate communication barriers.

General attributes of a successful oversight agency include:

- clear definitions of terms used in the agreement;
- a clear mandate and clear objectives;
- clarity regarding Party, agency and individual roles and responsibilities;
- clarity regarding agency operational procedures;
- trust among the Parties to the agency and among the members of the agency;
- attending to both internal and external communication needs in an open, transparent manner;
- a robust dispute resolution process;
- membership and mandate representative of local issues of concern; and,
- arms-length operation from appointing or nominating parties.

It is preferable to separate environmental and social-economic matters; the former tend to be science-based and largely technical in nature; the latter tend to be policy-based and political in nature. Only rarely will individuals be proficient in both worlds.

There must be separation between operational and advisory functions. Oversight agencies cannot be operational in function with respect to the project under consideration; they cannot be responsible for the day-to-day or year-to-year decisions of the project proponent. To do otherwise would mean that the agency is no longer independent of the proponent but has become accountable for the latter's decisions.

The NWT has experience with independent monitoring agencies including those associated with the diamond mines. All agencies have experienced growing pains as they work to establish trust and take into account the interests and perspectives of the various founding parties. The NWT experience suggests that personalities play a significant role in an agency's success. The members of an oversight agency must be selected carefully to ensure that they bring the appropriate individual and collective skills to the table. As much as possible, local experts should be engaged in the work of the oversight agency. Local experts are less likely to leave the agency and will improve the likelihood that it will achieve its objectives.

3.0 Context for a Giant Mine Remediation Project Environmental Monitoring Committee

This section includes definitions for key terms used in this document, describes certain principles that would guide the creation and operations of an Environmental Monitoring Committee, sets out its vision and mandate, and lists its main functions. While the term “oversight” is commonly used in the literature, the working group recognized certain sensitivities associated with the term. While some parties strongly prefer the more accurate descriptor “oversight”, the working group agreed to adopt the term “Environment Monitoring Committee” as a working title for the proposed body. However, the title does not alter the purpose and functions of the body as discussed above and set out below.

3.1 Definitions

“consensus decision-making” is a group decision making process that seeks the consent but not necessarily the agreement of all participants, and the resolution of objections. It results in decisions that can be accepted by all parties. It does not require unanimous consent but instead results in decisions that all parties can live with and proceed accordingly.

“environment” refers to the components of the Earth, including:

- (a) air, land and water;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in (a) to (c).

The **“parties”** referred to in this document include representatives of the Department of Aboriginal Affairs and Northern Development Canada (AANDC), the Department of Environment and Natural Resources (ENR), the City of Yellowknife (the City), the Yellowknives Dene First Nation (YKDFN) and Alternatives North, a registered NWT non-profit society and an active party in the environmental assessment process (AN).

“Project” refers to the remediation of the surface of the Giant Mine site and the perpetual care and maintenance of the arsenic stored underground as described in the Developer’s Assessment Report dated October 2010 and submitted by Canada and the GNWT to the Mackenzie Valley Environmental Impact Review Board, and all other relevant materials provided by Canada and the GNWT thereafter.

“science” includes both western science and Traditional Knowledge.

“working group” refers to the small group that the parties agreed to establish to explore options for an oversight committee for the Giant Mine Remediation Project. The working group does not have a mandate to make decisions regarding the possible establishment of an oversight committee or to engage in formal negotiations toward such establishment. The parties agreed that the recommendations of the working group would be forwarded to the parties’ respective leadership for consideration and decisions.

3.2 Guiding Principles

The Developer’s Assessment Report filed with the Mackenzie Valley Environmental Impact Review Board commits Canada (led by AANDC) and the GNWT (led by ENR) as the proponents of the Giant Mine Remediation Project to remediate the surface lands of

the Giant Mine site to agreed-upon standards and to maintain the arsenic trioxide stored underground in a “perpetual state of care and maintenance”, i.e., the frozen block method. Canada and the GNWT have also committed to further researching options to render the arsenic trioxide stored underground environmentally safe and stable, including in-situ and ex-situ treatment options.

At the March 6-7, 2012 workshop hosted by YKDFN and AN, participants agreed that the following elements are essential to ensure the Project achieves its objectives:

- rigorous environmental monitoring programs;
- an effective adaptive management regime (including adoption of the precautionary principle);
- a robust inspection system;
- open and timely access to information related to the Project including considerations related to management decisions, arsenic trioxide care and maintenance, and research plans and outcomes; and,
- public accountability.

Representatives of the parties (AANDC, ENR, AN, the City and the YKDFN) agreed in principle, and subject to approval by their respective leadership, that to achieve the foregoing it would be in the public interest to establish an arms-length Giant Mine Remediation Project monitoring committee. The committee, referred to here as the “Environmental Monitoring Committee”, would focus its attention on providing science-based advice on environmental matters related to the Project and on effective communications about the Project among the parties and the general public. The parties also agreed, again subject to approval by their respective leadership, that a clear, robust, accessible and binding dispute resolution process, including for matters related to budgets and interpretation and with timelines, is critical to the success of the Environmental Monitoring Committee.

Workshop participants agreed to use their best efforts to work together collaboratively and cooperatively in moving forward, recognizing that a credible and effective Environmental Monitoring Committee would assist the successful implementation of the Project and consequently help to build public confidence in the undertaking. Simply put, an effective Committee could provide the assurance to the public that the Project is on track and adequately monitored that the proponents, because they are the proponents and wear multiple other hats and despite their best efforts, cannot.

Representatives of AANDC, ENR, AN, YKDFN and the City agreed to form a small working group to explore options for an oversight committee. All agreed that the working group’s efforts would be “without prejudice” to subsequent decisions by their respective organizations.

3.3 Vision and Mandate

Based on the principles and objectives identified at the workshop and subsequent discussions among the working group, the following are proposed for a future Giant Mine Remediation Project Environmental Monitoring Committee:

Vision

A multi-party consensus based partnership that will build trust, support the responsible remediation and perpetual care of the Giant Mine site including enhancing the quality of

life and the environment, and communicate effectively with all parties, particularly the general public

Mandate

- To provide independent expert advice on environmental matters related to the Project
- To ensure that its advice regarding the remediation and perpetual care of the Giant Mine is focused on the objective of enabling the Project to proceed in a manner which minimizes environmental harm and risks, maximizes environmental benefits and opportunities and builds public confidence in the Project
- To establish and maintain effective communications among all parties and with the general public regarding the remediation and perpetual care of the Giant Mine site, to build a broad understanding of the activities underway and planned, and consequently to enable public confidence in the Project

3.4 Functions of a Giant Mine Remediation Project Environmental Monitoring Committee

An Environmental Monitoring Committee would provide independent science-based advice to the parties and to the appropriate regulatory agencies on environmental and related technical issues relevant to the Project. It would also work to ensure timely and effective communications among the parties and the general public, relaying public concerns about the Project to Canada, the GNWT and regulatory agencies and providing information and insight to the public. It would not replace the proponents' general roles and responsibilities to communicate about the Project with the public and specific interest groups, but would instead provide a strategic, arms-length "ground-truthing" service for proponents and public alike.

The functions of the Environmental Monitoring Committee would include:

- enabling effective communications among the parties and the public including annual reporting by, and financial accountability of, the Environmental Monitoring Committee;
- parallel to monitoring the implementation of the Project, encouraging research to further explore environmentally safe and secure, cost-effective treatment options that could reduce or eliminate the need for perpetual care and maintenance requirements for the arsenic trioxide stored underground at the Giant Mine;
- maintaining "institutional and societal memory" related to the Project;
- reviewing the design of environmental monitoring programs and environmental management plans, including perpetual care plans, and the outcomes or results of those programs and plans;
- monitoring commitments made by Canada and the GNWT during the environmental assessment that are not contained in regulatory instruments; and,
- creating and maintaining public confidence in the Project through open, effective and unbiased strategic communications and the provision of independent advice that supports sound environmental management

Canada and the GNWT would consult with the Environmental Monitoring Committee on environmental matters covered in the Environmental Monitoring Committee on the basis that the Environmental Monitoring Committee would have:

- open and timely access to information related to the implementation of the remediation plan, including the perpetual care and maintenance of the underground arsenic trioxide;
- access to confidential information necessary to achieve the mandate of the Environmental Monitoring Committee in a manner which will ensure the continued confidentiality of that information;
- responses from Canada and the GNWT to information requests and correspondence from the Environmental Monitoring Committee to the best of their abilities and within 30 days. Canada and the GNWT will encourage the affected regulatory agencies to do likewise; and,
- intervenor standing in relevant regulatory processes.

The Environmental Monitoring Committee would provide advance copies of significant Committee reports, including annual reports and reports related to major reviews of management and monitoring programs, to the parties to the agreement establishing the Environmental Monitoring Committee 15 (fifteen) days prior to the public release of those reports.

The Environmental Monitoring Committee would have ready access to a panel of technical experts of its choosing and reasonable resources to draw on the expertise of those experts in fulfilling its mandate. At the same time, to reduce costs and avoid redundancy of effort, the Environmental Monitoring Committee would be encouraged to draw on the expertise of bodies established by Canada and the GNWT for the Project, including the Independent Peer Review Panel and third party auditors. Efforts to avoid duplication and redundancy of effort would not sacrifice the ability of the Environmental Monitoring Committee to provide independent expert advice as the latter is central to the Committee's purpose.

Key technical environmental considerations within the mandate of the Environmental Monitoring Committee would include:

- surface water quality and hydrology;
- ground water quality and movement;
- creek and lake biology;
- fisheries and fish habitat;
- wildlife and wildlife habitat;
- vegetation;
- permafrost;
- climate;
- ambient air quality;
- stationary emission sources;
- archaeological resources;
- operation and performance of project facilities and equipment in relation to the environment;
- the cumulative effects of all activities on these and other aspects of the environment; and,
- environmental improvements resulting from the Project.

4.0 Establishment of a Giant Mine Remediation Project Environmental Monitoring Committee

The following discussion sets out some of the guiding principles for the establishment of an Environmental Monitoring Committee for the Giant Mine Remediation Project, the budget framework, the structure of the Committee, and the selection and appointment process for members.

4.1 Principles

The Environmental Monitoring Committee would be:

- established pursuant to a binding agreement among the parties;
- independent of the parties;
- advisory to the parties; and
- established as a registered non-profit society in the NWT.

The Environmental Monitoring Committee would have:

- secure, adequate long-term funding provided by government by Project phase and as those phases are approved; and,
- secure tenure for the life of the Project, recognizing that changes to the Environmental Monitoring Committee's mandate and budget may be appropriate as the Project moves from site remediation to long-term operation and maintenance (perpetual care).

4.2 Budget

The budget for the Environmental Monitoring Committee would be reviewed on a regular basis and linked to the phases of the Project. It can be expected that the Environmental Monitoring Committee would be relatively busier, meeting more frequently and engaged in the regulatory process more often during the site remediation phase of the Project than it would be during the subsequent long-term operation and maintenance phase. The Committee would require a budget adequate to enable it to develop and maintain an office and staff, to retain its own experts, to meet with the public and the parties on a regular basis, to develop and implement strategic communications plans, to intervene in regulatory hearings and otherwise meet its full mandate.

The core administrative budget requirements (staff, office space, office equipment purchase and lease, telephone, fax and internet charges and so on) for the Environmental Monitoring Committee might be on the order of \$250,000 per year for the initial five years, with additional funding necessary to address specific operational needs such as retaining experts, preparing interventions and so on. The total estimated budget for the Committee could therefore be in the range of \$250,000 to \$400,000 for the first five years, and would diminish significantly when the Project moves from remediation to long-term operation and maintenance. The funding formula, including the conditions whereby the Committee could seek independent expert advice on technical matters related to the Project, the budget review process and the budget arbitration mechanism remain to be determined.

4.3 Structure

The Environmental Monitoring Committee should be composed of five (5) residents of the communities of Yellowknife, N'dilo or Dettah based on their knowledge of the Project, the concerns of the residents, their understanding of the technical and environmental issues associated with the Project and their objectivity regarding the

Project and the positions and interests of affected groups, including the parties. Committee members should be representative of the issues of concern to the parties but should not be representative of a party, i.e., they would not act as representatives of a party once they are selected as members of the Committee. YKDFN culture, YKDFN history with respect to the Giant Mine and YKDFN interests and views regarding mine site remediation will require particular attention and emphasis.

4.4 Member Selection and Appointment Process

Environmental Monitoring Committee members would be chosen by the parties on a collaborative basis in accordance with a selection process to be determined by the parties. While a selection process has not been agreed upon by the working group, the following considerations may apply:

- the selection and appointment process should be open and transparent;
- terms of reference for the Environmental Monitoring Committee and membership criteria should be established by the parties prior to advertising or selection of candidates;
- interested candidates could be solicited through a public “expressions of interest” process including newspaper ads;
- prospective candidates can not be in a conflict of interest with a party or the Project;
- prospective candidates must provide assurance that if appointed they will represent the Environmental Monitoring Committee and not a particular party.

There are a number of options available for selecting Environmental Monitoring Committee members. These include but are not limited to the following:

- each party could appoint a member directly to the Committee;
- each party could select one or more candidates, provide the list to government and the government minister(s) would appoint the five members of the Committee from among the list;
- the parties could collectively select a slate of five members from a pool of qualified candidates by applying a collaborative rating process, e.g., each party rates all prospective candidates on a scale of one to five based on pre-determined criteria. Candidates with the highest total would be appointed to the Committee;
- one or more parties could appoint a member directly to the Committee while the remaining parties would select the remaining members on a consensus basis.

As noted elsewhere in this document and during the March 6-7, 2012 workshop, finding the right members and the right balance of skills and experience that the members would bring to the Giant Mine Remediation Project Environmental Monitoring Committee is crucial to its credibility and success. The selection process would therefore require very careful consideration.

Once established, the Environmental Monitoring Committee would select from among its members a chair, a vice-chair and a secretary-treasurer. The Environmental Monitoring Committee’s by-laws and rules of procedure would be consistent with the terms of the agreement establishing the Environmental Monitoring Committee.

5.0 Framework for an Agreement to Establish a Giant Mine Remediation Project Environmental Monitoring Committee

An agreement among the parties would be necessary to establish an Environmental Monitoring Committee, to set its mandate and to enable its operations. The agreement would be binding on the parties.

The environmental agreements created for the diamond mining operations in the NWT provide useful examples for an agreement to establish an Environmental Monitoring Committee. These agreements were negotiated over significant periods of time, evolving and building on lessons learned, and using well tested concepts (e.g. the precautionary principle and adaptive management) and organizational models (e.g. NWT registered non-profit societies). The diamond mine environmental agreements include articles potentially relevant to a future Giant Mine Remediation Project Environmental Monitoring Committee. Not all articles are directly applicable to the Giant Mine Remediation Project given the nature of the respective projects but the environmental agreements are nonetheless illustrative. They include provisions with respect to:

- the purpose of the agreement: sets out the context of the agreement, specific objectives and guiding principles (e.g., adaptive management, the use of Traditional Knowledge and the application of the Precautionary Principle).
- the establishment of the oversight body: describes the timeframe and process by which the oversight body will be established.
- the mandate of the oversight body: describes the specific functions of the oversight body with regard to its overall purpose, role in regulatory processes, review of environmental reports, plans and programs, responsibilities with regard to information management and communications and so on.
- term: sets out the timeframe within which the oversight body would operate.
- composition: describes the make up of the oversight body, the selection and appointment processes, terms and remuneration of members and so on.
- reporting and accountability; establishes the frequency of reports by the oversight body and the considerations the Parties are to give to those reports.
- funding: sets out the framework for the operating budget of the oversight body and provisions for review and revisions to the budget.
- information and cooperation: sets out the principles underlying the provision of information to the oversight body by the Parties.
- reporting requirements of the proponents and the oversight body: establishes the types of reports to be provided by the Parties and the oversight body, the contents of such reports, the review processes to be undertaken and the obligations to respond to the reports by the respective Parties and the oversight body.

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- review of environmental management plans: describes the environmental management plans which the proponent is required to prepare, their contents, the process by which they are to be developed in conjunction and in cooperation with the other Parties and the oversight body, the review process for such plans and the obligations on the Parties to respond to comments.
- review of environmental monitoring programs: describes the nature and content of environmental monitoring programs to be developed and implemented by the proponent, the provision of monitoring program data to the oversight body and the requirement to consult and cooperate with the agencies involved in cumulative effects monitoring.
- closure and reclamation plan: describes the nature and content of closure and reclamation plans, the process of consultation and cooperation within which the plan is to be developed, the process for reviewing the plan, the importance of ensuring natural recovery to the extent possible, the need for progressive reclamation and the process by which the plan would be approved.
- matters related to ongoing compliance with regulatory permits: describes various matters related to compliance with respect to regulatory permits including waste disposal, the maintenance of the project site in a neat and clean condition at all times, handling of fuel and hazardous chemicals and spill reporting.
- identification, protection and management of archaeological sites: describes the proponent's obligations to minimize impacts on archaeological sites and the requirements related to the conduct and reporting of archaeological surveys.
- the application of Traditional Knowledge in all aspects of the oversight body's mandate: sets out the principles related to the use of Traditional knowledge in all phases of the project, including Traditional Knowledge studies.
- specific studies and research: describes various studies and research program related to the project that the proponent would be expected to carry out in order to fulfil its obligations as set out in the agreement and pursuant to the Environmental Assessment and other considerations.
- dispute resolution: sets out a detailed, multi-stage binding dispute resolution process and the roles of the parties and the oversight body in that process.
- term of the agreement: establishes the term of the agreement, normally the life of the project until full and final reclamation of the site in accordance with all applicable regulatory instruments, the terms of the agreement and all post-closure monitoring and maintenance required in connection with the project.

The agreements also include statements of no prejudice, definitions and other matters of general interpretation and a number of general provisions.

6.0 Conclusions and Recommendations

This report represents a consensus of the views of the members of the working group and provides a basis for decisions as to whether the parties wish to engage in formal negotiations to establish a Giant Mine Environmental Monitoring Committee.

The working group has concluded that it is in the parties' best interests that a Giant Mine Environmental Monitoring Committee be established through a binding agreement amongst all the parties.

As noted earlier, the working group is mandated by the parties to explore the context and process for the possible establishment of a Giant Mine Environmental Monitoring Committee. The working group itself does not have a mandate to negotiate the establishment of such a body. It is to present the results of its discussion to the parties' respective leadership for further consideration and decisions.

Also noted earlier is the Review Board's recommendation to the parties to the environmental assessment of the Giant Mine Remediation Project that they "work together to reach agreement on outstanding issues such as project oversight, a perpetual care plan (including stable funding) and the key details of the environmental management plan".

The following milestones are relevant to the deliberations of the parties with respect to the possible establishment of an Environmental Monitoring Committee:

- **June 11, 2012:** response to the Review Board Information Request to report progress on independent oversight and the basis for areas of agreement and disagreement
- **July 11, 2012:** submission of technical reports to the Review Board
- **September 11-14, 2012:** public hearing on the Giant Mine Remediation Project

6.1 Recommendations

1. The working group recommends that the parties initiate discussions in the near term to achieve the objective of establishing an Environmental Monitoring Committee for the Giant Mine Remediation Project, applying the considerations contained in this document.

2. The working group recommends that the parties clearly indicate by the end of May 2012 whether they are in fact prepared to pursue discussions and if so, on what basis.

3. The working group recommends the parties submit a joint response to the Review Board Information Request (due June 11, 2012) that describes their progress toward establishing an Environmental Monitoring Committee for the Giant Mine Remediation. If there is no agreement to proceed, the parties would be free to respond to the Information Request as each sees fit. However, this May 18, 2012 report would remain confidential unless there is unanimous agreement among the parties to release it.

4. If there is agreement to continue discussions, the working group recommends that the parties achieve agreement-in-principle regarding the establishment of a Giant Mine Remediation Project Environmental Monitoring Committee by July 11, 2012. The Review Board should receive a joint update (ideally an agreement-in-principle) from the parties as part of the technical submissions due July 11, 2012. This would enable the

parties to reassure the Review Board that an agreement will be reached on project oversight, as the Review Board has urged.

5. The working group recommends that by the time of the public hearing, the parties confirm with the Review Board that a Giant Mine Environmental Monitoring Committee will be established and outline to the Review Board the terms of the agreement reached to that point.

6. The working group recommends that the agreement to establish the Environmental Monitoring Committee be finalized only upon completion of the environmental assessment to incorporate any relevant suggestions and measures. All parties to the agreement should be involved in this last stage.

7. Finally, the working group recommends that the Giant Mine Remediation Project Environmental Monitoring Committee be fully operational prior to the initiation of the Project.