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September 15, 2008

Tawanis Testart
Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
Box 938, 5102-50th Avenue
Yellowknife NT
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**Re: Comments on Responses to Giant Mine Remediation Plan
Environmental Assessment Scoping Hearing Undertakings**

Dear Ms. Testart

I would like to provide comments to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) regarding a number of the responses provided by various parties to undertakings made during the July 22-23, 2008 scoping hearing.

Undertaking #1 (Freeze Optimization Study)—Department of Indian Affairs and Northern Development

The response by DIAND raises several significant issues as this developer has requested that the work of the study be excluded from the environmental assessment. Few details are presented on the exact nature of the work as the “engineering parameters and precise design of the optimization study have not yet been finalized”. The developer does not know whether the work will require “any applicable permitting/licensing” yet wants it excluded.

There is no information provided on whether this work would be reversible or whether it would preclude other options for managing the underground arsenic including removal or in-situ treatment, now or in the future.

That the developer has not yet conducted this important work raises questions about the technical viability of the frozen block option itself. This study appears to be a pilot project for the frozen block alternative. It is not clear why the developer would not have completed this work prior to applying for the water licence to implement the entire Remediation Plan that triggered this environmental assessment.

The freeze optimization study is distinct from the “necessary interim activities” outlined in the response to undertaking #5 and the developer has not attempted to characterize the study in this manner (see paragraph 3 on page 4 of response to undertaking #5). It is not yet clear whether section 118(2) of the *Mackenzie Valley Resource Management Act (MVRMA)* could apply to the work to be undertaken for the study, as it is still being developed. It is similarly not clear whether

the study could be construed as a “reasonable measure” under s. 39(1) of the *Northwest Territories Waters Act (NTWA)*.

I do not accept the developer’s position that the freeze optimization study should be excluded from the environmental assessment. It would be premature at best for the MVEIRB to agree to exclude this work when it has yet to be defined in any detail.

Undertaking #2 (GNWT Role in Reviewing Remediation Plan and Ingraham Trail Realignment)—Environment and Natural Resources

From the information provided by GNWT, it is clear that the tests for an accessory development (dependent, linkage and proximity) for the Ingraham Trail realignment have been met. The issue is what portion of the realignment should be considered an accessory development. I maintain my position that the realignment of the Ingraham Trail away from the Giant mine serves as a mitigative measure in itself, especially with regard to access control and limiting liability. Options 1 and 2 as presented by GNWT, would meet this need. I continue to believe that the Ingraham Trail realignment, including Options 1 and 2, should be included within the environmental assessment.

Undertaking #3 (Availability of Participant Funding)—Department of Indian Affairs and Northern Development

The response from DIAND is disappointing as this was an opportunity for a constructive approach to the issue of participant funding. DIAND should have provided details on a specific process for this environmental assessment including a total funding allocation, application details and deadlines. There is still no clear written commitment from DIAND regarding participant funding for this environmental assessment.

Undertaking #4 (Role of Developers)—Department of Indian Affairs and Northern Development and Government of the Northwest Territories

The developers respond by stating “additional technical information/expertise will presumably be available from the departments of Fisheries and Oceans and Environment Canada”. In the Environment Canada response, filed three days earlier, it is stated that it would assume “observer status” unless new information becomes available when it will assist (“respond, review and/or comment”).

The MVEIRB has been put in the difficult position of needing to obtain other outside technical assistance and should hire its own experts. It may also be possible to approach other federal government departments such as Natural Resources Canada or agencies such as CANMET for assistance.

Undertaking #5 (MVRMA s. 118)—Department of Indian Affairs and Northern Development

I accept the proposal from DIAND that the “necessary interim activities” should be included in the environmental assessment and that there is the necessary authority to continue with this work under the *NTWA*.

On page 3 of the response, it is noted that the “Minister determined that various activities needed to be carried out as reasonable measures” pursuant to s. 39 of the *NTWA*. It is not clear whether there is a written record of this decision but the developer should provide appropriate documentation.

Undertaking #6 (Outstanding Taxes for Giant Mine)—City of Yellowknife

It would be helpful for the City to provide a breakdown of the outstanding taxes for the amounts due while Miramar Giant operated the site, the amounts due from the Crown, and any interest, to provide a better understanding of how the figure provided was calculated.

In conclusion, I remain convinced that the public interest would be better served by the MVEIRB making a decision to proceed immediately to an impact review of the Giant Mine Remediation Plan based on the potential for significant adverse impact on the environment and significant public concern (see s. 128(1)(b)(i) and 128(1)(c) of the *MVRMA*).

Sincerely,

A handwritten signature in black ink that reads "Kevin O'Reilly". The signature is written in a cursive style with a large, prominent 'K' and 'R'.

Kevin O'Reilly