



Giant Mine Environmental Assessment

IR Response

Round One: Information Request - Yellowknives Dene First Nation #02

May 31, 2011

INFORMATION REQUEST RESPONSE

EA No: 0809-001

Information Request No: YKDFN #02

Date Received:

February 28, 2011

Linkage to Other IRs:

Review Board IR #11

Alternatives North IRs: #07, #10, #12, #15, #22

City of Yellowknife IR #09

This response is also linked to the INAC response to the Review Board fourth deficiency statement regarding funding certainty.

Date of this Response:

May 31, 2011

Request:

If this project, by its very existence, is going to preclude any other solutions from being implemented, then it necessarily needs to be accompanied by a commitment to fully fund the project in perpetuity. While the current government may acknowledge it's a requirement, future governments may not treat the level of concern in the same way.

Reference to DAR (relevant DAR Sections):

The DAR recognizes that elements of the project are to be managed in perpetuity.

- Temporal Boundaries, Section 3.4.2 – "It is recognized that the developer's activities on site will continue in some form in perpetuity" (p. 3-6).
- Summary of Post-Remediation Conditions, Section 6.1.2 – "A new Water Treatment Plant will be constructed and will be operated year-round, potentially in perpetuity" (p. 6-4).
- Section 14 – "Some forms of monitoring are expected in perpetuity, particularly around the function of the thermosyphons and the treatment of water. Consequently, a system to establish standards, deliver programs and receive and evaluate monitoring results will also exist in perpetuity" (p. 14-1).





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- Technical Advisor Studies, Section 6.2.2.1 – “It was concluded that the best in situ alternative was Alternative B3, isolating the arsenic trioxide dust in its current location by creating a block of frozen dust and rock, monitoring in perpetuity and, if necessary, maintaining isolation by periodic refreezing” (p. 6-7).
- Hazardous Waste, Section 6.12.2 – “The new underground or new pit or quarry options would all require additional disturbance and would create a new source that would need to be managed in perpetuity” (p. 6-97).

Table 6.13.4 of the DAR presents a summary of estimated costs for the implementation phase of the Giant Mine Remediation Project, and Table 6.13.5 presents a summary of estimated annual costs over the long-term. This latter Table identifies the estimated cost for long term operations and maintenance as \$1.91 million per year. The DAR also states that INAC will seek the necessary Treasury Board approvals in order to obtain this long term funding.

Reference to the EA Terms of Reference:

Section 2.3 of the Terms of Reference (Temporal Scope) – “As the contaminant will continue to exist on the site, the risk of potential contamination may exist in perpetuity. To predict impacts in the future, assumptions must be made about future events and conditions” (p. 7).

Section 3.2.2 of the Terms of Reference requires the Developer to provide: “A description of project feasibility including financial feasibility. Include discussion of funding certainty for the development and related monitoring” (p.10).

Section 3.2.4 of the Terms of Reference (Development Description) requires the Developer to provide: “Estimated capital, operating, monitoring and maintenance costs (the latter presented by year for the life of the development)” (p.13).

Summary:

- INAC undertook a comprehensive, peer reviewed process in order to identify the most suitable approach to remediating the Giant Mine site for the long term.
- INAC has a high level of confidence that the Giant Mine site will remain a government priority and that long-term funding will continue to be made available.
- However, the nature of the Canadian Federal Government governance process does not allow INAC, or any existing Parliament, to bind or guarantee the actions of a future Parliament.
- INAC’s high level of confidence in obtaining funding is based on the potential risks associated with the site, the stable and consistent government support provided to date, the significant level of investment already made and the awareness by all stakeholders, including the Governments of Canada and the Northwest Territories, of the long-term nature of the project.
- The Government is aware of the Giant Mine and is committed to meeting its obligations.





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- In INAC's view, the budgeting and approval of expenditure authority, required for all government projects, are the appropriate mechanisms to address funding of the perpetual care requirements associated with the Giant Mine Remediation Project.

Response:

Due to the detailed and exhaustive approach that was used to identify the approach, and the nature of the site (i.e., no quick fixes or walk away options), INAC has confidence in the Frozen Block method. As stated in the DAR, INAC and the Government of the Northwest Territories (GNWT) consider the Frozen Block method to be a long-term solution. This method was selected among 56 possible options, subjected to extensive peer review, and has not been found lacking in effectiveness or permanence.

INAC has a high level of confidence that the Giant Mine site will remain a government priority and that long-term funding will continue to be made available. Table 6.13.4 of the Developer's Assessment Report (DAR) presents a summary of estimated costs for the implementation phase of the Giant Mine Remediation Project, and Table 6.13.5 presents a summary of estimated annual costs over the long-term. At the same time, the nature of the Federal Government does not allow INAC to commit future governments to specific priorities or funding requirements.

Under Canadian parliamentary democracy, Parliament cannot bind the actions of a future Parliament. As long as a Parliament or a Legislature is acting within its sphere of competence, it may promulgate any new law or amend or repeal any old law. The power to alter old laws remains constant even in the face of an old law declared to be unamendable. This power is codified in s. 42(1) of the federal **Interpretation Act**. Likewise, the **Financial Administration Act** provides that no expenditures may be made by government without a Parliamentary appropriation.

It is also important to underscore the difference between the Government of Canada and a non-government proponent. The government of Canada is a democratic constitutional entity and is not at risk of disappearing, going bankrupt, or de-listing in the same manner as a private-sector corporation or other commercial actor. The Giant Mine site is also well known throughout Canada as one of the most contaminated sites under the responsibility of the Federal Government. There are aspects of the site that pose potentially significant risks to both human health and the environment.

Given this high and public risk profile, the mine site has remained a government priority since the late 1990s when the Crown became involved. Since that time INAC, as the federal department responsible for the site on behalf of the Government of Canada, has allocated resources to effectively manage risks at the site while developing a remediation plan. Based on the significant investment to date, and the consistent priority given to the management of the risks at the Giant mine site, it is expected that this Project will remain a priority. The Government is aware of the Giant Mine and is committed to meeting its obligations. This long-term commitment will be reinforced through adherence to the Developers' obligations under applicable licences, permits and regulatory law.

The funding for the Remediation Project of the Giant Mine site is provided by the Federal Contaminated Sites Action Plan (FCSAP). To date, Federal Government support and funding has been stable and





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consistent. Since the announcement of the program in 2004, the Government of Canada has continually expressed its commitment to the program and has spent in the order of \$95 million on the Giant Mine site. Even prior to the establishment of the FCSAP program, INAC spent \$14 million on the care and maintenance of the Giant Mine site between 1999 and 2004. This is a strong historical track record of dependable funding and support on behalf of INAC and the Federal Government. Building upon past success, INAC continues to use best practices and efforts to ensure that funding will be available for the life of the Project.

Further to the above, the Governments of Canada and the Northwest Territories, in selecting the preferred remediation option for the site, have recognized and accepted that the Giant Mine Remediation Project includes long-term care, maintenance and monitoring. The DAR also states clearly that several elements of the project will be required to be addressed in perpetuity. These are essential components of the remediation approach at the Giant Mine site that will protect human and environmental health and safety and ensure the integrity of Canada's investment.

Unforeseen changes in circumstances in a wide variety of areas could conceivably alter any number of factors. Nonetheless, the situation at the Giant Mine site into the future will be such that changing and short term priorities of a particular government should not affect the decision to continue to provide funding towards long term care, maintenance and monitoring. As noted, INAC's confidence is framed within a government financial system where it is not possible to commit a future government definitively to funding a specific priority or project decades into the future or in perpetuity.

In summary, INAC maintains a very high level of confidence that the Giant Mine site will remain a priority and that long-term funding will be made available due to the fact that:

- the site has a number of known potential risks to both human health and the environment;
- government support and funding has historically been stable and consistent;
- a significant level of investment of public funds has already been made; and
- all stakeholders, including the Governments of Canada and the Northwest Territories, are aware of the long-term nature of the project.

In INAC's view, the budgeting and approval of expenditure authority, required for all government projects, are the appropriate mechanisms to address funding of the perpetual care requirements associated with the Giant Mine Remediation Project.

