



Giant Mine Environmental Assessment

IR Response

Round One: Information Request - Yellowknives Dene First Nation #24

June 17, 2011

INFORMATION REQUEST RESPONSE

EA No: 0809-001

Information Request No: YKDFN #24

Date Received

February 28, 2011

Linkage to Other IRs

YKDFN IR #24, 25

NSMA IR #02

Alternatives North IR #03

City of Yellowknife IR #03

Date of this Response

June 17, 2011

Request

Preamble:

During the EA preliminary period, the proponent(s) conducted a drilling program at the GIANT mine site. During this period, there was considerable uncertainty on the administration, inspection and regulation of this activity. Clarity on this point is important for the long term oversight of this project where the same department/government occupies so many roles. The interaction between these Proponents and regulatory inspection needs to be transparent for the Parties to have faith that the process is being conducted in such a way that it ensures their interests are being considered, not just the proponents'.

Question:

It is requested that INAC explain why they did not choose to pursue a MVLWB permit.

If the answer is that this site is regulated by the GNWT, we request that GNWT provide answers as to how this site was regulated, inspected, and administered, including why MVLWB permits were not required. Furthermore, YKDFN request that the applicants provide clear explanations and a framework for all parties to understand the complex regulatory regime for the project moving forward.

Reference to DAR (relevant DAR Sections):

DAR S. 1.7.2 Key Environmental Legislation and Regulations

Reference to the EA Terms of Reference:

S.3.2.2 Developer





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Summary

In response to the question of pursuing licences and permits, the Giant Mine Remediation Project Team (Project Team) assessed the drilling program and determined the study did not require a water licence. With respect to a land use permit, there was and remains, a lack of regulatory certainty due to an outstanding joint determination required under s.98 (2) of the *Mackenzie Valley Resource Management Act* (MVRMA), which requires the Mackenzie Valley Land and Water Board (MVLWB) and the Territorial Minister to make a joint determination regarding regulatory jurisdiction within municipal boundaries. Until such a determination is made, the Giant Mine Remediation Project (Remediation Project) continues to be impacted by jurisdictional uncertainty.

Going forward, the Project Team has applied for a Water Licence (MV2007L8-0031), which will be the main regulatory instrument for the Remediation Project. The Project Team will be accountable for the terms and conditions in the Water Licence and any other permits or authorizations, and subject to enforcement measures. With respect to “clear explanations and a framework for all parties to understand the complex regulatory regime for the project moving forward,” the response below highlights some of the roles of Indian and Northern Affairs Canada (INAC) and the Project Team.

The legislative regime also includes more than INAC. A list of permits and subsequent applications appearing in the Developer’s Assessment Report (DAR) Table 6.13.1 demonstrates that the regulatory regime is comprehensive, and that the Giant Mine Remediation Project (Remediation Project) is subject to terms and conditions, scrutiny and inspections under other federal and territorial legislation.

Response

In response to the question of pursuing licences and permits, the Project Team assessed the drilling program¹ and, in consultation with its technical advisors, determined the study did not require a water licence. In regards to land use permitting under the *Mackenzie Valley Land Use Regulations* (MVLURs), there was, and remains, a lack of regulatory certainty due to an outstanding joint determination required under s.98(2) of the MVRMA. Section 98(2) requires the MVLWB and the Territorial Minister to make a joint determination regarding regulatory jurisdiction within municipal boundaries. Until such a determination is made, the Remediation Project continues to be impacted by jurisdictional uncertainty.

Going forward with the Remediation Project, the Project Team has applied for a Water Licence (MV2007L8-0031), which will be the main regulatory instrument for the Remediation Project. The Project Team will be accountable for the terms and conditions in the Water Licence and any other permits or authorizations, and subject to enforcement measures. A list of other relevant permits and authorizations can be found in the DAR at s.1.7.2. In addition to the Water Licence, INAC will apply for: i) *Fisheries Act* authorization, ii) Asbestos Licence, and iii) Quarry Permit. This list is not exhaustive, and

¹ The Project Team informed the Mackenzie Valley Environmental Impact Review Board and Parties to Environmental Assessment, EA0809-001, of the geotechnical investigation on December 17, 2010.



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is subject to amendment based on information brought forward in this environmental assessment process.

The Project Team acknowledges that this regulatory uncertainty is a significant concern for affected parties, and is committed to satisfying all regulatory requirements, as they are clarified and to ensuring that there is transparency and accountability regarding compliance at the site.

For further clarity regarding your request for “clear explanations and a framework for all parties to understand the complex regulatory regime for the project moving forward” the following highlights roles of INAC and the Project Team in the various phases of the environmental assessment and regulatory review.

With respect to Environmental Assessment, EA0809-001, the Project Team is the project proponent for the Remediation Project. INAC has other roles in the environmental assessment and regulatory review process. The MVRMA anticipates and allows INAC to have different roles during the environmental assessment process. For example, in addition to proponent, roles contemplated by the MVRMA include the INAC Minister participating in post-EA decision-making. The MVRMA also sets out boundaries to make sure the INAC Minister’s actions are transparent. For example, as part of the decision-making process, INAC’s Minister must show that Review Board’s recommendations have been taken into account and that his decision is based on facts and sound reasoning.

INAC controls, manages and administers all Crown lands in the Mackenzie Valley under the authority of the *Territorial Lands Act* (TLA), and the *Federal Real Property Act*. INAC is also responsible for the administration, inspection, and enforcement requirements associated with renewable resources, non-renewable resources and related environmental legislation, including the MVRMA and the *Northwest Territories Waters Act* (NWTWA), elements of which are relevant to the Remediation Project.

INAC Inspectors are responsible for ensuring compliance with legislation, regulations, and the terms and conditions of permits and licenses issued by the MVLWB and INAC. These responsibilities are exercised by INAC under the MVRMA, NWTWA, TLA, Territorial Quarry Regulations, and the Northwest Territories and Nunavut Mining Regulations. The INAC Operations Directorate is the lead on inspection and enforcement matters.

The Project Team has applied to the MVLWB for a Water License (MV2007L8-0031). This will be the main regulatory instrument for the Remediation Project. The Project Team will be accountable for the terms and conditions of the Water License and any other permits relating to the Project. In addition to the Water License, the Project Team will apply for: i) *Fisheries Act* authorization; ii) Asbestos License; and iii) Quarry Permit. A list of other relevant permits and authorizations can be found in the DAR at s. 1.7.2. This list is not exhaustive, and is subject to amendment based on information brought forward in this EA process.

Based on the above, it is evident that INAC occupies many roles with respect to the Giant Mine Remediation Project. The relevant legislation has contemplated the potential for INAC to occupy more than one role in the environmental assessment and regulatory process. For example, the Review Board





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and MVLWB are impartial administrative decision-makers who are independent of the INAC Minister. Neither INAC nor the INAC Minister has direct control over the Review Board's decision-making processes.

On an operational level, INAC employees are responsible for consulting with the INAC Minister on Review Board's recommendations. This role is separated from the Project Team's role. INAC will document this process fully, and will be neutral in its approach so not as to fetter the INAC Minister's discretion. INAC will exercise its different roles in the Project in a manner that will meet the general principles of fairness, transparency, and accountability.

The roles within INAC are structured to avoid conflict of interest, bias, or apprehension of bias. This will be ensured by each branch of INAC fulfilling its legislative role and acting in a transparent manner. As discussed in Chapter 13 of the DAR, the Project Team is committed to engaging the public and interested parties to explain INAC's roles and responsibilities, and how INAC will ensure fairness, transparency, and accountability.

The legislative regime includes more than Indian and Northern Affairs Canada and the Giant Project is subject to terms and conditions, scrutiny and inspections under both federal and territorial legislation. This includes authorizations issued by MVLWB; Fisheries and Oceans Canada, Natural Resources Canada; and through Territorial legislation administered by the Chief Inspector of Mines, Workers' Safety and Compensation Commission and departments of Municipal and Community Affairs, Environment and Natural Resources, and Public Works and Services.

For further information on the regulatory regime and other relevant permits and authorizations for the Remediation Project, the reader is referred to the DAR Section 1.7.2 and DAR Table 6.13.1.

