

Building Public Trust and Confidence

Report of a Workshop on Oversight of the Giant Mine



March 6 - 7, 2012

Yellowknife, NWT

A submission to the Mackenzie Valley Environmental Impact Review Board

Acknowledgements

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Introduction

The need for independent oversight of the remediation and perpetual care of Giant Mine has consistently been raised by First Nation and public parties engaged in the Giant Mine Remediation Plan Environmental Assessment process. At the October 2011, Technical Sessions the need for oversight was again raised. The need for independent oversight arises from widespread recognition of the multiple and potentially conflicting roles of Aboriginal Affairs and Northern Development Canada (AANDC) and the lack of policies or legislation to manage conflicting roles. AANDC is the developer/ proponent of the Giant Mine Remediation Plan. This federal government department is also responsible for conducting environmental inspections; has fiduciary and other special responsibilities for First Nations; has the ultimate authority for water licences; and a host of other responsibilities that potentially place it in a position of conflict.

To date there has been no dialogue within the local community and with governments to explore what oversight of Giant Mine should look like. Alternatives North and the Yellowknives Dene First Nation in consultation with the Giant Mine Remediation Project Team, agreed to bring the main parties to the Environmental Assessment together to discuss approaches to oversight. A two day workshop was held on March 6-7, 2012 in Yellowknife for this purpose. The workshop had four objectives:

1. Build consensus on the type of oversight appropriate for the Giant Mine Remediation project. If there is agreement on the type of oversight, develop objectives, function, and form for such an oversight body.
2. Contrast models of oversight against best practices in environmental monitoring and community involvement.



Giant Mine in March 2012

3. Compare the logistical organization of various oversight bodies related to mining or remediation projects, to understand how and why they work.
4. Identify the next steps and parties to carry out any follow-up work.



Workshop participants

The more than 30 people who participated in the workshop are listed at the end of this report in Appendix 1. This workshop report will be filed with the Mackenzie Valley Environmental Impact Review Board (MVEIRB) to form part of the public record. In conjunction with the workshop, an evening public meeting was also held to provide an opportunity for the Yellowknife public to hear from some of the guest speakers. Main messages from this event are included in this report.

Workshop Report

This report summarizes the presentations and conversations that occurred at the Oversight of the Giant Mine Workshop.

Day One: March 6, 2012

Expectations and Elements of Oversight

Following introductions and a brief overview of the workshop objectives and format, participants shared their expectations and thoughts on oversight. **Kevin O'Reilly** referenced the October 2011 Environmental Assessment Technical Sessions as an important turning point on the issue of oversight. Since that time, there has been a willingness among all parties to the assessment to discuss oversight. **Todd Slack** noted that clarity about oversight

can improve public engagement and confidence in the implementation of the Giant Mine Remediation Plan. While present as an observer, **Alan Ehrlich** made participants aware that the MVEIRB encourages the parties to resolve issues, evolve a shared definition of oversight, and seek a clear, binding commitment prior to the completion of the environmental assessment process in the spring/summer 2012. This would avoid a determination by the Board about oversight as a possible mitigation measure or cause for further project review.

“There has to be a better way of engagement.”

Todd Slack,
Yellowknives Dene
First Nation

Octavio Melo commented that departmental funding and participation at this workshop are indicators of AANDC’s interest in oversight discussions. He said that the concept of oversight needs to be clearly defined and agreed to by the parties involved. Good communications encourages understanding. He also noted that AANDC has drafted environmental policy to address gaps in the policy framework. **Tony Brown** noted that clear objectives and targets would be helpful to discussions about oversight.

Reflecting on the past, **Bob Bromley** suggested that what happened at Giant was due largely to inadequate resources and little or no public involvement. **David Livingstone** pointed out that governments and the community didn’t know enough about what was going on and “when we found out, it was too little too late.” It was a common belief that the permafrost would always be present to isolate the arsenic trioxide stored underground but that is not the case, as we well know today. There was also awareness that significant costs would be involved in managing the arsenic trioxide. He noted that even though pressure was applied to increase the company’s security, the water licensing authority did not require additional resources from the company. While several factors contributed to the situation at Giant, there are clear lessons about the need for collective and shared responsibility for industrial problems.

It is important to be inclusive and give citizens and agencies confidence about what is going on in their backyard.

David Livingstone,
Environmental Consultant

Dennis Kefalas said that the situation at Giant evolved over a long period. While the City of Yellowknife is

mandated to look after citizens' interests, the City never had any input into decisions at Giant in the past. He agreed that the water board at the time had a chance to get the securities in place to help address arsenic trioxide issues but chose not to.

Kevin O'Reilly suggested that lack of technical understanding and the absence of oversight were also contributing factors. He noted that not a lot has been learned from past mistakes. There is still no legislation in place to prevent another Giant Mine. The requirement for financial security remains discretionary as does the need for a closure plan. Fortunately, the Government of the NWT now makes financial security mandatory for surface leases. Mr. O'Reilly said that the public wants oversight especially given the need for the perpetual care of Giant. "Perpetual care has to work for citizens and has to engage them." The public wants to be involved and work in partnership rather than as adversaries. The public needs to have confidence about remediation and care plans for Giant Mine. **Todd Slack** agreed that extra-regulatory commitments are required.

David Livingstone stated that it was not so much a lack of oversight but the lack of will to act. The absence of will was the reason that the regulators of the day choose not to require additional security. **Dennis Kefalas** agreed. He said that the community and the City were likely complicit in so far as Giant represented a revenue stream and it didn't want to put the company out of business by making additional financial demands.

While recognizing that the *Mackenzie Valley Resource Management Act* (MVRMA) is relatively robust legislation, **Tony Brown** questioned the idea that the current regulatory system would not prevent another Giant Mine. **Kevin O'Reilly** suggested that if the MVRMA was actually implemented as it was intended, there would be less potential for another Giant Mine. The MVRMA is intended to be implemented as an integrated system.



David Livingstone, Bob Bromley, and George Lafferty with Norbert Poitras in the background

"Lack of oversight created the problem and it is part of the solution."

Kevin O'Reilly, Alternatives North

"If people choose not act, oversight counts for nothing. The real issue is will."

David Livingstone, Environmental Consultant

Case Studies on Oversight

Four presentations on oversight case studies were made during this segment of the workshop. The power point presentations are appended to this report. The main points discussed are summarized below.

1. Diamond Mine Monitoring Bodies

Dr. **Laura Johnston**, a Director of the Independent Environmental Monitoring Agency (IEMA), presented (via teleconference) an overview of the Agency. She noted that:

- IEMA was established through a binding Environmental Agreement.
- Signatories are the proponent (BHP Billiton) and the governments of Canada and the NWT.
- IEMA is a public watchdog for environmental management at the Ekati mine.
- IEMA oversees areas not covered by existing regulatory instruments or bodies.
- The IEMA board is independent in that members do not represent any specific organizational interest.
- Communications have challenged IEMA.

David Livingstone, a Yellowknife-based environmental consultant, provided some history about oversight agencies established for the NWT's diamond mines. The environmental assessment of the first diamond mine, Ekati, did not recommend an oversight body. However, the then federal minister responsible, Ron Irwin, saw merit in arms-length technical oversight. While not popular with the bureaucracy or the proponent, it was the Minister's will that influenced the establishment of IEMA. This established a precedent for the two subsequent diamond mines. Each of Rio Tinto's Diavik mine and DeBeers' Snap Lake mine have established environmental monitoring bodies but each differs in function and form.



Adrian Paradis , Octavio Melo, and Lisa Dyer

“Personalities can make or break an agency.”

David Livingstone,
Environmental Consultant

For example, the Environmental Monitoring Advisory Board (EMAB) set up for the Diavik mine is less technical and more community-based than IEMA. Further, a second oversight body, the Diavik Community Advisory Board (DCAB), was set up to monitor socio-economic and cultural issues.

Each oversight agency has experienced growing pains as they endeavour to work toward non-confrontational relationships and balance the interests and perspectives of the various parties. Personalities play a significant role in an agency's success and the ability of government, industry, First Nations, and communities to work together. Other characteristics of a successful oversight agency are:

- Legitimacy as a result of the mechanism that created it.
- Clear role and responsibilities.
- Clear scope or reach of work. For example, it should be clear whether the agency has the authority to intervene in other processes or is restricted to building the capacity of others including communities, to intervene.
- Secure and adequate funding.
- Clarity about how people participate and what motivates their participation/appointment.
- Access to technical expertise.



Workshop participants

A terms of reference for an oversight body needs to:

- Clearly state whether it has a purely technical or a representative function.
- Reflect function in structure and staffing.
- Clearly define terms used.
- Have clear objectives.
- Work from a basis of trust and open communications.

- Attend to both internal and external communication needs.

Mr. Livingstone reminded participants about the Alberta tar sands and its history of relying on regulatory processes and self-reporting. Both these approaches and government response have failed the environment and citizens.

Attempts to address these failures are evidenced through the recently announced monitoring regime and ongoing discussion about independent oversight of the tar sands.

Mr. Livingstone said that in the end, environmental management and safety are about communications, trust, and relationships. Oversight is a way to achieve these outcomes.

Dr. Laura Johnston and **David Livingstone** responded to several questions. In response to **Kerry Penney's** question about the absence of First Nation signatories to IEMA, Mr. Livingstone commented that it was an indicator of attitudes at the time although the Aboriginal governments played a strong role in negotiating the Environmental Agreement. These attitudes changed with the EMAB and DCAB oversight agencies established for the Diavik mine. Ms.

Penney also questioned the effectiveness of an agency if the GNWT and Federal Government don't have to implement recommendations from the oversight agencies (as is the case with the Environmental Agreement for the Ekati mine). Mr. Livingstone commented that when an independent body is allowed to become an operator, the system of checks and balance is undermined and issues of liability/risk, credibility, and trust arise. Dr. Johnston agreed. IEMA is a watchdog and oversight body, not an operator, regulator, or the government. Referring to the independence of IEMA board members, **Shauna Morgan** asked about the mechanism in place requiring members to consult. Dr. Johnston noted that while not mandated, IEMA endeavours to reach out and make regular visits to local communities. Still, consultations and



Giant Mine in March 2012

communications are challenging. IEMA is currently focused on improving communications.

Todd Slack asked about dispute resolution. Mr. Livingstone stressed the importance of having a dispute resolution process along with provisions that clearly articulate financial responsibility in any agreement for oversight. **Dennis Kefalas** questioned the concept of independence. Mr. Livingstone reiterated the need to clearly identify whether the agency is independent or representative. This is largely determined by the function of the agency. He said that there is considerable merit in having independent experts rather than representatives of interested organizations in order to separate the political and technical spheres.

“A watchdog monitoring agency is no place for adversaries.”

Dr. Laura Johnston, IEMA

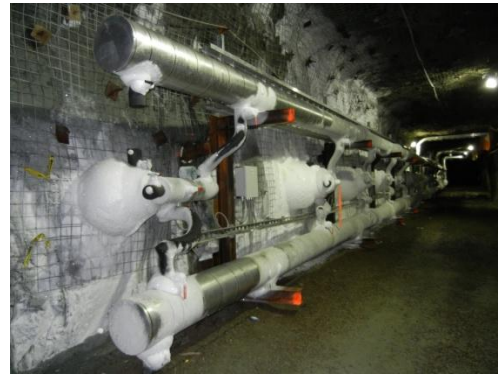
Tony Brown asked about a collaborative rather than a watchdog approach to oversight. Dr. Johnston and Mr. Livingstone explained that IEMA takes a collaborative, consultative approach. As an independent rather than representative agency, IEMA is more of a watchdog than an attack dog. The questions raised speak to the importance not only of a clear mandate but also the ‘mind set’ of the personalities involved. The individuals involved are central to avoiding adversarial situations and getting beyond particular issues and positions, in order to deal with interests and enable people to work together. Mr. Livingstone said that “agencies don’t have to be adversarial to get interests addressed.” Adversarial stances only bring industry and government back to economic arguments. The organizational independence of the parties needs to be respected in order to build collaborative relationships that respond to environmental interests and give the public confidence that responsible people are looking after their interests. Citizens don’t necessarily trust government or industry to protect their interests.

“We all have responsibility for the past and for the future.”

David Livingstone,
Environmental
Consultant

Terri Bugg asked how community input is integrated into decision making. Dr. Johnston explained that IEMA is not the only agency involved in environmental monitoring

and oversight and it is not involved in operations. IEMA's influence is through moral suasion and advice rather than any formal control mechanisms. She noted that as IEMA has matured and evolved its emphasis has shifted from a focus on independence to more collaborative environmental monitoring approaches. **Shauna Morgan** inquired about the processes for collaboration and the consequences of non-collaboration. Dr. Johnston said that annual reports are the main mechanism for promoting collaboration, making recommendations, and accountability. She said that IEMA has a good rate of success in terms of having its recommendations accepted. Mr. Livingstone added that attitudes at the outset set the tone for positive collaboration. To this end, it is important that the right people, right processes, and shared objectives are in place from the outset. He noted that imposing conditions for example, through an environmental assessment process, doesn't improve the likelihood of processes working or of people/agencies collaborating. **Todd Slack** noted that the spirit of collaboration is improved through engaging local people and having local people involved in management.



Freezing system underground at Giant Mine

Kevin O'Reilly noted that there are times when an adversarial approach may be necessary in order to bring attention to a particular issue or to resolve issues that come before a regulatory board or the courts.

2. Selected Canadian Public Sector Examples and Emerging Private Sector Best Practice

Tony Brown of SENES Consultants presented case studies on behalf of the Giant Mine Remediation Project. Six criteria were used to describe the case studies:

1. Access to information.
2. Funding.
3. Secure tenure.

"Seeing people on the street encourages better behaviours."

Todd Slack, Yellowknives
Dene First Nation

4. Legal basis.
5. Independence of overseers.
6. Obligation to respond.

Three public sector examples were presented: 1) Northern Saskatchewan Environmental Quality Committees, 2) Sydney Tar Ponds Remediation Project, and 3) the Britannia Mine in British Columbia. In addition, two best practices examples in the private sector were presented: 1) the Strategic Advisory Panel on Selenium Management, and 2) the Mining Association of Canada Community of Interest Advisory Panel.



Workshop participants

Mr. Brown pointed to the need for clear definitions and terminology to avoid any stumbling blocks to the formation and functioning of the oversight body. To function effectively, it is also important for an organization to have security of tenure and support.

In response to several questions about the case studies and best practices presented, **Octavio Melo** committed to producing a report to provide more detailed information. The report will discuss for example, the legal basis and independence of the bodies, the obligation to respond to recommendations, and the authority to intervene. Given the lack of assessment of communications and liaison functions, **Craig Yeo** identified the need for more information on these elements. The need for more information on the Sydney Tar Ponds Remediation Project was also identified as this project has similar characteristics as Giant Mine, particularly with respect to the need for perpetual care.

3. Legal and Institutional Aspects of Environmental Oversight Agencies

Dr. Natasha Affolder with the University of British Columbia Faculty of Law presented (via teleconference)

information on the legal and institutional aspects of environmental oversight agencies. The presentation is supported by a detailed report that was made available to workshop participants.¹ The report was previously filed with the MVEIRB.

Dr. Affolder explained that the need to deal with accountability deficits is evident in many spheres of society. Independent oversight is a way to address accountability deficits. Still, some accountability issues require public inquiry or must be dealt with by the courts.

Two concepts are key to accountability: 1) oversight, and 2) independence. Oversight is defined as monitoring decision making. It does not mean the power to make decisions. Oversight can inform decision making. It is a means to balance power and ensure public confidence. Independence is best described by its characteristics. A body that is fully independent has guaranteed existence or legal tenure, assured funding, and clear procedures for appointment and removal.

In projects with a protracted timeframe, follow-up to an environmental assessment can be a source of concern in the absence of oversight. Further, where there is potential for multiple roles and conflict, there is more reason for oversight. Oversight agencies can fulfill multiple roles but this can compromise their work and create tensions. For example, stress can be created among roles related to communication, access to information, and technical oversight. The tension among roles can be balanced within oversight bodies through structure and staffing.

Lessons from the experience of oversight agencies include:



Caleb Lande, Dennis Kefalas, and Kerry Penney

¹*Independent Environmental Oversight. A Report for the Giant Mine Remediation Environmental Assessment.* February 2011. Dr. Natasha Affolder, Katy Allen, and Sascha Paruk, Faculty of Law, University of British Columbia. http://www.reviewboard.ca/upload/project_document/EA0809-001_Independent_Environmental_Oversight_Report_1328898833.PDF

- Clear articulation of the main role of the oversight body is needed prior to choosing the form and structure.
- Composition should follow function.
- Access to information is paramount.
- Guaranteed funding is necessary so the agency does not spend time and effort fighting for its existence.
- Proponents should be obliged to respond to recommendations from the oversight body.
- Oversight bodies should have a legal basis.
- Oversight bodies can identify gaps in environmental monitoring and management.
- Meaningful involvement of First Nations should not be an after-thought or piggy-backed on something else. It requires careful attention and devoted capacity funding. Dr. Affolder suggested that meaningful involvement of First Nations in the oversight of Giant Mine could be precedent setting.
- Independence can be critical to ensuring public buy-in and confidence, and ultimately the body's success.

“It is really about trust, collaboration, and a feeling of transparency. It’s about relationship building rather than independence.”

Dr. Natasha Affolder,
UBC

Kevin O’Reilly asked about the consequences of mistakes in cases where there is no oversight. Dr. Affolder commented that litigation is often the response when there is no mechanism to work out problems or to respond to community fears and concerns. **Lisa Dyer** asked for clarification regarding an agency’s role as a watchdog versus an attack dog. Dr. Affolder noted that when groups are uncertain if they are an attack or a watchdog or have both roles, they are less effective than those that have a collaborative role. Oversight agencies need to watch for gaps, call others to action, and stimulate a response. It is unrealistic to expect one body to be both a watchdog and an attack dog or to be both collaborative and adversarial. If technical oversight is the body’s role, it is necessary to have experts in place to do that work. If the agency’s role is community involvement, different people are involved. Whatever the role, there are always questions about the

extent to which local knowledge is reflected and the involvement and role of outside people and experts. As much as possible, local experts should be engaged in the work of the oversight agency.

“Local expertise will reduce turnover and improve successes.”

Dr. Natasha Affolder,
UBC

4. Good Neighbour Agreements

Charles Sangmeister, member of the Stillwater Oversight Committee described the Stillwater Good Neighbour Agreement as a model for citizen and industry cooperation.

Mr. Sangmeister explained that the Good Neighbour Agreement (GNA) between community groups and industry is a legally binding contract that provides for dispute resolution through arbitration. It is supported by a multi-million dollar security bond posted by the Stillwater Mining Company. No similar agreements exist with government. The structure supporting the GNA includes citizen councils/associations, an oversight committee for each of the two mines, a technology committee, and technical consultants. This structure works to:

- 1) Minimize potential adverse influences on local communities, economies, and environment.
- 2) Maintain baseline water quality, biological integrity, and beneficial uses of surface and ground waters.
- 3) Establish and maintain open communications.
- 4) Provide for citizen councils to participate in mine decisions.

By majority vote, the oversight committees make decisions and recommendations, and take action on issues arising under the GNA.

The GNA is a model of collaboration, stewardship, and volunteerism. Volunteer council members participate in planning, inspections, audits, water quality monitoring, waste minimization practices, and reclamation plans. The



Charles Sangmeister sharing information on Montana's Stillwater Good Neighbour Agreement

estimated \$135,000 annual budget is mainly consumed by third party technical consultants.

The GNA is a living document that can be, and has been amended. The ability to amend agreements is important to accommodate change. The GNA provides a system of checks and balances, engages citizens and engenders public confidence, and establishes mechanisms for transparent communication and conflict resolution. The GNA is attractive to industry because it reduces conflict and engages the public as a partner.

“Why hide stuff?”

Charles Sangmeister,
Stillwater Oversight
Committee

Octavio Melo inquired how funding was negotiated and questioned the absence of agreements involving governments. Mr. Sangmeister and **Caleb Lande** explained that there are budget amounts set out in the GNA but these amounts can be altered and are indexed. It is unclear why governments have not been involved in any GNA. **Kerry Penney** noted that a GNA might have been appropriate when the Giant Mine was operating. In response to comments about company liabilities, Mr. Sangmeister noted that it is unclear what would happen if the security bond was exhausted. **Kevin O’Reilly** asked about the negotiation of the very strong disclosure and confidentiality provisions in the GNA. Mr. Sangmeister replied that negotiation was based on mutual trust and recognition that it only makes sense to share information.



Kevin O’Reilly, Alternatives North, presenting at the Yellowknife public meeting

The Yellowknife Public Meeting

Alternatives North sponsored an evening public meeting to share information and invite comment on oversight at Giant Mine. Both **Charles Sangmeister** and **Dr. Laura Johnston** (via teleconference) presented the information that they had shared earlier in the day.

Among the some 40 people in attendance, several offered comments and asked questions. Main messages emerging from the Yellowknife public were:

- Frustration with the lack of reclamation progress at the mine site particularly with respect to safety issues such as stopping tailings dust from blowing around.
- Inadequate signage and information to alert berry pickers, swimmers, and others using the site.
- Questionable rationale, cost effectiveness, and efficacy of the frozen block method.
- Uncertain access to, and responsibility for information.
- Uncertain timeframe and merit of the Environmental Assessment process.
- Poor quality and irregular communications on all aspects of Giant Mine care and remediation.
- Lack of checks and balances.
- A need for independent oversight.
- Frustration with the lack of public/local involvement and awareness.

"It's like the fox watching the chickens."

a member of the Yellowknife public

"What's happening at Giant shouldn't be hush-hush."

a member of the Yellowknife public



Charles Sangmeister, Stillwater Oversight Committee, presenting at the Yellowknife public meeting

Day 2: March 7, 2012

Current Management and Oversight at Giant Mine

Octavio Melo's presentation provided information about the current management and oversight of Giant Mine. The presentation is attached.

As a preface to his presentation, **Octavio Melo** acknowledged that there is much work to do to define and continue the dialogue on oversight. He noted that the "devil is always in the details." From discussions in the first day of the workshop and at the public meeting, it is clear that the public lacks information and communications are poor especially about events and timelines. These areas must be addressed to restore public trust and confidence. Mr. Melo is committed to doing what he can to address these concerns.

While Giant Mine is now a 'line' item in federal budgets because it is a project of national interest and one that requires perpetual care, it is challenging to ensure that local interests are also addressed.

Mr. Melo's presentation focused on current institutional, legislative, and policy mechanisms for internal and external accountabilities. Among the legislative mechanisms, water licensing is key to the remediation process. While the Minister responsible cannot amend a licence or overturn decisions made by the Mackenzie Land and Water Board, the Minister can reject a licence.

Several bodies have been established to manage and oversee Giant Mine remediation.

- The Giant Management Board comprised of AANDC and Public Works and Government



Kevin O'Reilly , Ben Nordahn and Charles Sangmeister underground at Giant Mine

Services Canada (PWGSC) is the senior oversight, issue resolution, and decision making body.

- The Project Leadership Committee comprised of AANDC, PWGSC, and GNWT Environment and Natural Resources is the senior body responsible for management and execution.
- The Giant Mine Oversight Committee established by the Canada/GNWT Giant Mine Cooperation Agreement is intended to: protect human health, public safety, and the environment; finalize and implement an effective care and management plan; finalize and implement a cost effective remediation plan; maximize territorial economic opportunities; and cooperate to achieve timely, efficient, and cost-effective accountability and performance.
- The Independent Peer Review Panel comprised of independent technical experts will be re-established to review major design and conceptual issues that are beyond the scope of the existing project, and review and endorse final proposals and designs required to meet regulatory requirements.
- The Giant Mine Community Alliance comprised of local stakeholders, is responsible for sharing information and relaying public concerns related to remediation.



Thermosyphons at Giant Mine

There are also commitments to establish an environmental management system working group as well as a First Nations and government body. This latter body is discussed in the developers' assessment report (DAR) but has yet to be defined. Third party audits and public performance reporting are also commitments made by AANDC.

Todd Slack questioned AANDC's position on oversight. Mr. Melo stated that for all intents and purposes the committees described are more management than oversight bodies. He is committed to working from the discussions at this workshop to advance the issue of oversight within his department.

David Livingstone acknowledged both the frustration of the community and among individuals working within AANDC. "It is very tricky to manoeuvre effectively through the system." He referred to the remediation of Colomac Mine as an example of resistance within the bureaucracy. There was resistance to working as equal partners with the Tlicho communities but this partnership together with a separate process involving the elders resulted in a "remarkable convergence of views." The Colomac example illustrates that when all parties are meaningfully engaged in the process good decisions are made and environmental assessment becomes unnecessary. This was the case at Colomac which was not subject to a formal Environmental Assessment or a public hearing for a water licence. Mr. Livingstone applauded Mr. Melo's commitment to move beyond the currently proposed project management structure (as detailed in the DAR) to find an acceptable resolution to local issues. Rather than "duking it out in hearings," Mr. Livingstone encouraged the parties to take this opportunity to find clear terminology to define what is needed and acceptable for oversight of remediation and care of Giant Mine.

Kevin O'Reilly thanked Mr. Melo for his presentation and commitment. He noted that the current management structures seem to be top-heavy and lack local presence or authority. He expressed his fear that little progress will be made if "everything has to be run through the management committees in Ottawa." He noted that the Cooperation Agreement between the Governments of Canada and the NWT names the City of Yellowknife but the City had no input into the

"Meaningful engagement is necessary for consultation."

David Livingstone,
Environmental
Consultant



Bob Bromley, Caleb Lande, Charles Sangmeister, and Kevin O'Reilly

Agreement. The Yellowknives Dene First Nation has never been involved. Further, the Agreement requires the GNWT to contribute \$23 million, agree to the frozen block method, and accept remediation of the site to an industrial use standard. While the minutes of the Giant Mine Oversight Committee mention involving the City of Yellowknife and YKDFN, this has not happened.

“We need to have local positions with authority.”

Kevin O’Reilly,
Alternatives North

Mr. O’Reilly suggested that it might be possible to transform existing or proposed structures so they better serve local interests. He suggested:

- Designating the Giant Mine Oversight Committee as the Giant Mine Management Board and engaging the City of Yellowknife and YKDFN in it.
- Reshaping the Independent Review Panel as an independent technical oversight panel and possibly including some socio-economic capacity.
- Altering and revitalizing the Community Alliance to better engage and consult with local communities and citizens.

Octavio Melo acknowledged that there is a willingness within AANDC to alter proposed structures to better address local concerns.

Deputy Mayor Mark Heyck questioned how the City of Yellowknife can engage in discussions. Mr. Melo noted that discussions regarding the City’s engagement continue within the Giant Mine Oversight Committee. Further, the Remediation Team continues to share information with the City despite the lack of clear direction for engaging and working with the municipality. **Adrian Paradis** added that the Remediation Team endeavours to meet with the City monthly. **David Livingstone** suggested that the City might want to be cautious in its efforts to



Todd Slack, Terri Bugg, Charles Sangmeister, and Caleb Lande

become part of the Giant Mine Oversight Committee given that it was not party to the negotiations leading up to the Cooperation Agreement. Mr. Melo noted that the current Cooperation Agreement would not be relevant to a reconstituted oversight committee.

Bob Bromley asked about altering the role of the Independent Peer Review Panel. Mr. Melo explained that the challenge is to balance the number and effectiveness of the committees. There is the potential and a preference to re jig and refocus existing bodies so they work better rather than abandoning them or creating more. **David Livingstone** noted that the current structures follow a standard industry approach. Unfortunately, this model does not include the environmental and socio-economic elements that bodies such as EMAB and DCAB address.

Todd Slack stated that a sign of good faith is needed from AANDC. There needs to be some acknowledgement that existing boards and committees don't work.

Bob Long inquired about decision making and accountability mechanisms. He stated that the City wants full accountability. Rather than an adversarial process, the City wants collaboration. Collaboration means that the City can make its interests known directly to decision makers.

Based on lessons learned from other experiences and concerns about the current Giant Mine management bodies, **David Livingstone** offered further insights for managing and overseeing the remediation and care of Giant Mine. Based on the principle of composition reflecting function, he suggested a separation of decision making/operational and advisory functions.

- Decision making, administrative, and operational functions would encompass many of the elements and bodies established by AANDC to adhere to the legislative, regulatory, and policy requirements of for example, the Mackenzie Valley Land and Water

“There is an opportunity to create something positive from the greatest environmental screw-up in history.”

Todd Slack, Yellowknives
Dene First Nation

Board and GNWT. These bodies basically take responsibility for designing and carrying out the project.

- A small EMAB-like structure would be responsible for advisory or oversight functions. Its role would include monitoring, representing public concerns/interests, providing timely public advice, and ensuring full and open communications. It would have a balance of technical and communication expertise. The EMAB-like structure could be supported by a team of technical expert advisors. Technical advisors might also be responsible for work on a perpetual care plan

“The public wants the EMAB-DCAB model.”

David Livingstone,
Environmental Consultant

Mr. Livingstone explained that it is the developer/proponent’s responsibility to address socio-economic and stakeholder issues. In terms of oversight, he noted that it may be preferable to separate environmental and social-economic matters. **Kevin O’Reilly** added that communications and liaison, and technical functions should also be addressed separately. He suggested that socio-economic issues might best be negotiated with YKDFN.

In light of the model suggested by David Livingstone, **Todd Slack** noted that YKDFN has never been in favour of the frozen block method and would likely have difficulty playing a role in decision making and operations. **Lisa Dyer** expressed her appreciation for the differentiation of functions but identified significant blurring of responsibilities between the two sides of the model. For example, on the matter of communications, it might be difficult to discern whether messages are related to operations or oversight, or whether they are event or project specific. She also noted that not all scientists or experts are good communicators or in a position to provide timely advice. Mr. Livingstone commented that within the



Giant Mine

standard industry model, oversight or providing timely expert advice as well as serving the decision-makers and operators can't be done by the same group/individuals. **Craig Yeo** reiterated that the basis for testing the efficacy of the model is whether composition reflects function.

Kevin O'Reilly commented that for at least the last 10 years dealing with issues around Giant Mine has been characterized as "a vicious circle of mistrust." This paralyzes AANDC and causes the community to be very critical and lack confidence. He said that relationships built on trust are needed and a starting point would be a formal apology from government.

"A formal apology is needed from the government."

Kevin O'Reilly,
Alternatives North



Caleb Lande, Ben Nordahn and Charles Sangmeister underground at Giant

Form and Function for Oversight at Giant Mine

Working from the two-sided decision making/operations and advisory model discussed previously, participants identified the characteristics and best practices associated with each main function. Main points are listed in the table below.

Decision Making & Operations	Advisory
<ul style="list-style-type: none"> -Legislated basis specifying role and responsibilities including fiduciary (as per regulatory standards/guidelines, <i>Financial Administration Act</i>, and Section 35 Aboriginal rights) -Obligated to respond to (but not necessarily act) and share information with advisory body -Internal information sharing -Stakeholder consultation for system/committee development to address specific needs (e.g. environmental management systems, emergency response plan) -Non-interference with existing bilateral government relationships -Shares and acknowledges others' responsibilities (so local stakeholders feel part of decision making) -Clear liability for decisions -Clear definition of capacity and ability to innovate -Membership based on shared understanding and agreement of interests, terms and conditions, and latitude/extent of collaboration -Members include federal government, GNWT and possibly the City of Yellowknife -Operations do the work and carry out the project 	<ul style="list-style-type: none"> -Establishment mechanism (legal basis) -Clear, focused mandate for remediation and perpetual care phases -Oversight and monitoring function -Monitors decision making based on public interests/criteria (e.g. commons, distribution of costs and benefits, safety) -Offers advice and recommendations -Arms-length/independent from decision makers -Secure funding -Transparency to build public confidence -Communicates with public -Provides full access to information -Small group -Independent members able to represent interests of organizations and serve public interests -Has local members and longevity of members -Has access to technical expertise -Composition follows function -Balances tensions and responsibilities for technical oversight and communications/liaison -Builds relationships while maintaining distance -Members include YKDFN which might have two representatives (a technician and local knowledge/land users)

Jeff Humble noted that the City of Yellowknife wants to articulate its many concerns and interests with respect to Giant Mine and find a role or a place to fit within the processes for remediation and care. Several participants discussed the ethics of membership within the decision making/ operational sphere and the advisory/oversight sphere. There was some agreement that it is not desirable or realistic to be involved in both functions.

Next Steps

It was agreed that a commitment from all parties is required to work together to describe and articulate responsibilities for oversight. This needs to be done prior to the completion of Environmental Assessment hearings.

Given that the hearings are scheduled for completion in the spring/summer 2012, it is important to maintain the momentum begun at this workshop so an agreement can be taken to the MVEIRB.

Kevin O'Reilly suggested that a working group of the parties in this workshop (federal government including AANDC and PWGSC, the City of Yellowknife, YKDFN, GNWT, AN) be established to 'flesh out' an agreement. He recommended that David Livingstone be retained to work with/facilitate the working group. All the participants and Mr. Livingstone agreed with this suggestion. The **Honourable Michael Miltenberger** expressed the GNWT's commitment to this process. Participants agreed that the working group will define interests and terms and conditions, give AANDC clarity on oversight, and work toward a collaborative approach. Engagement will be without prejudice. **Adrian Paradis** reminded participants that the interests of the Tlicho Region, North Slave Metis, and Chamber of Commerce will need to be considered. It was suggested that there may be ways to engage others such as through bilateral discussions and making a draft agreement available for public comment.

David Livingstone agreed to undertake background work during the week of March 16, 2012, organize a conference call for March 23, and organize a meeting early in April.

Adrian Paradis and **Octavio Melo** agreed to provide the resources so that Mr. Livingstone can facilitate the process. All parties expressed a commitment to provide Mr. Livingstone with a statement of their interests before March 23.



Aerial view of Giant Mine in summer

Closing Remarks

Participants closed the workshop with hopeful remarks about working collaboratively, building relationships of trust, improving communications, and better serving public interests. The willingness of all the parties to work together was applauded as was AANDC's commitment to work to restore public trust and confidence in the remediation and perpetual care of Giant Mine.

Appendix 1. Workshop Participants, Observers, and Resource People

Participants

1. Adrian Paradis, Head, Technical and Environmental Services, Contaminants and Remediation Directorate, Aboriginal Affairs and Northern Development Canada
2. George Lafferty, Community Consultation Officer, Contaminants and Remediation Directorate, Aboriginal Affairs and Northern Development Canada
3. Octavio Melo, Manager, Operations, Contaminated Sites Program Aboriginal Affairs and Northern Development Canada
4. José Cormier, Communications, Contaminants and Remediation Directorate, Aboriginal Affairs and Northern Development Canada
5. Tony Brown, SENES Consultants on behalf of Aboriginal Affairs and Northern Development Canada
6. Lisa Dyer, Project Manager, Public Works and Government Services Canada
7. Mark Palmer, Regional Director, Environmental Services - Edmonton Office, Public Works and Government Services Canada
8. Dave Abernethy, Public Works and Government Services Canada
9. Bob Bromley, Weledeh Member of the Legislative Assembly, Government of the Northwest Territories
10. Craig Yeo, Weledeh Constituency Assistant, Legislative Assembly, Government of the Northwest Territories
11. Sarah True, Regional Environmental Coordinator, North Slave Region, Environment and Natural Resources, Government of the Northwest Territories
12. Michael Miltenberger, Minister, Environment and Natural Resources, Government of the Northwest Territories
13. Todd Slack, Research and Regulatory Specialist, Land and Environment, Yellowknives Dene First Nation
14. Terri Bugg, Community Liaison and Technical Advisor, Giant Mine Advisory Committee, Yellowknives Dene First Nation
15. Shannon Gault, Executive Assistant, Yellowknives Dene First Nation
16. Mark Heyck, Deputy Mayor, City of Yellowknife
17. Dennis Kefalas, Director of Public Works, City of Yellowknife
18. Kerry Penney, Manager, Legal Services, City of Yellowknife
19. Bob Long, City Administrator, City of Yellowknife
20. Dennis Marchori, Director, Public Safety, City of Yellowknife
21. Jeff Humble, Director, Planning and Lands, City of Yellowknife
22. Kevin O'Reilly, Volunteer, Alternatives North
23. France Benoit Volunteer, Alternatives North
24. Shauna Morgan Volunteer, Alternatives North

Observers

25. Alan Ehrlich, Manager, Environmental Impact Assessment, Mackenzie Valley Environmental Impact Review Board
26. Shannon Hayden, Environmental Assessment Officer, Mackenzie Valley Environmental Impact Review Board

Resource People

27. Lois Little, Facilitator, Lutra Associates Ltd., Yellowknife
28. Dr. Natasha Affolder, Faculty of Law, University of British Columbia (via telephone)
29. Charles Sangmeister, Stillwater Good Neighbour Agreement Oversight Committee, Montana
30. Caleb Lande, Stillwater Good Neighbour Agreement Oversight Committee, Montana
31. Dr. Laura Johnston, Director, Independent Environmental Monitoring Agency (via telephone)
32. David Livingstone, Holarctic Environmental Consulting Ltd., Yellowknife

The Independent Environmental Monitoring Agency



**Presentation to the
Oversight at Giant Mine Workshop
Yellowknife, Northwest Territories
March 6-7, 2012**

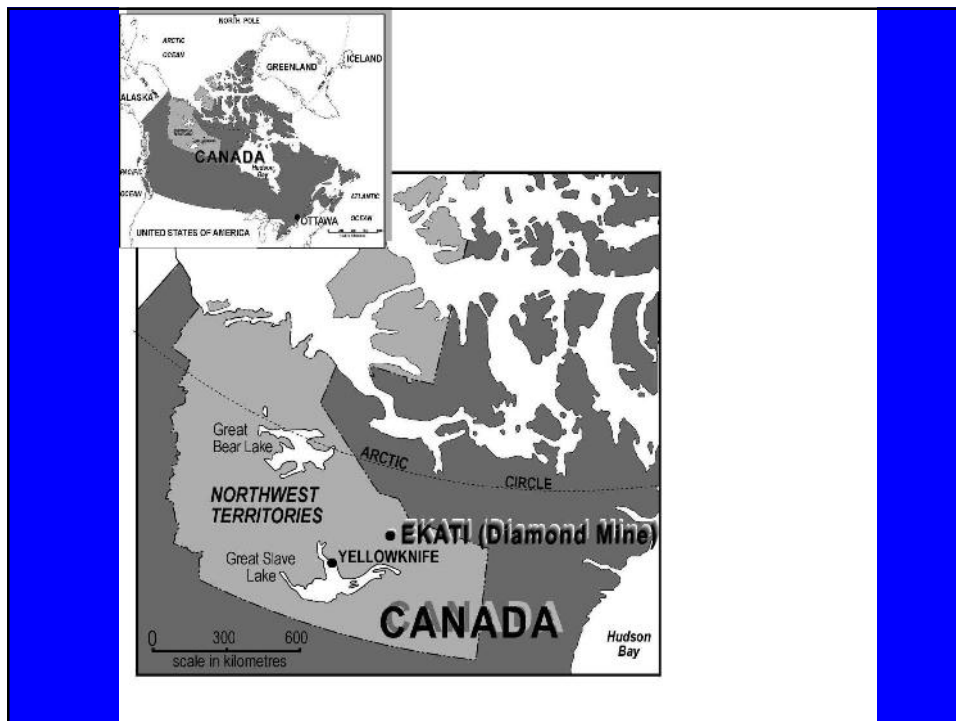
Presentation Outline

- **Description of Ekati™ Mine project**
- **Environmental Review**
- **Rationale for Independent Environmental Monitoring Agency (IEMA)**
- **IEMA Organization**
- **IEMA Mandate**
- **IEMA Activities**



Ekati Mine

- **Diamond mine (Canada's first)**
- **Gem quality diamonds**
- **Northwest Territories**
 - Arctic barrens, 300 km NE of Yellowknife
- **Construction from 1996**
- **Operation from October, 1998**
- **Surface and underground mining of kimberlite pipes (usually found under lakes)**
- **Processing plant on site**



Panda Pit Ekati



Long Lake Containment Facility (Tailings Pond) Ekati



Panda Waste Rock Pile



Misery Waste Rock Pile



Ekati Roads



Standard roadside



Caribou friendly roadside

Environmental Review for Ekati Mine

- **Full Environmental Assessment Panel review 1994-1996**
- **1997 project approval**
- **Approval subject to an Environmental Agreement**
 - Signatories - BHPB (proponent), GNWT, Canada
 - Based on adaptive environmental management principles

Environmental Review for Ekati Mine

- **Major affected Aboriginal Peoples**
 - **Kitikmeot Inuit Association (Kugluktuk)**
 - **Tlicho Government (Behchoko, Gameti, Whati, Wekweti)**
 - **Akaiicho Treaty 8 (Lutsel K'e and Yellowknives Dene First Nation)**
 - **North Slave Metis Alliance (Yellowknife and Rae-Edzo)**

Rationale for IEMA

- **Public watchdog for environmental management at the Ekati mine**
- **To oversee areas not covered by regulatory instruments, e.g.:**
 - **Air**
 - **Wildlife**
 - **Traditional Knowledge**
- **Oversight of BHPB, governments and regulators**

IEMA Organization

- **Seven society members: BHPB, GNWT, Canada, and four Aboriginal governments**
- **Seven board members appointed by society members**
- **No “representation” - all board members have the same common mandate**
- **Budget for 2011-12 about Can \$630,000 provided by BHPB**
- **Funds came from governments for startup**
- **Set up as an NWT non-profit Society**

IEMA Mandate

- **Work with BHP Billiton and the two governments to promote good environmental management at Ekati**
 - **Work with BHPB offering ideas for effective environmental management**
 - **Provide an extra set of eyes and ears for governments and regulators**
- **Work with the affected Aboriginal peoples to see that their interests are conveyed to BHP Billiton and to the two governments and that reliable information about the Ekati Mine is conveyed to the Aboriginal peoples**



IEMA Mandate (2)

- **Monitor and review environmental management plans and reports prepared by BHPB and government agencies**
- **Analyze issues to promote the identification, evaluation and management of environmental impacts**
- **Review the activities of regulatory agencies and their interactions with BHPB**



IEMA Activities

- **Meets and corresponds regularly with BHPB and regulators about environmental issues at Ekati**
- **Reviews and comments on regulatory approvals sought by BHPB that relate to environmental matters**
- **Participates in and hosts technical workshops involving environmental management at the Ekati mine**
- **Reports to Aboriginal governments and the public**



IEMA Activities (2)

- **Maintains a publicly accessible library of all materials regarding environmental management of the Ekati mine**
- **Provides a website, newsletters, brochures and annual reports (technical and plain language)**
- **Holds an annual general meeting for members of the Monitoring Agency**



IEMA Contributions

- **Works with BHP Billiton and the many other parties to improve monitoring programs**
- **Through review of monitoring results, helps contribute to avoiding environmental problems**
- **Helps develop capacity in the communities**
- **Promotes the effective use of Traditional Knowledge for better environmental management**



IEMA Contributions (2)

- **During development of the recently approved Interim Closure and Reclamation Plan promoted:**
 - Mine specific component objectives and criteria
 - More detailed reclamation research plans
 - Pit reclamation plans to rejoin them to the surrounding ecosystems
 - Concept of design and operation for closure



IEMA Contributions (3)

- **Diamond Wildlife Monitoring Program Review:**
 - Promoted collaborative process
 - Pushed for better caribou monitoring to:
 - Help understand causes of Zone of Influence
 - Apply better mitigation to reduce footprint of mine



Formal Assessment of IEMA – 2009

- **External Review by SENES**
- **Main Findings**
 - good technical work by Agency
 - room for improvement with communications

Formal Assessment - Follow up

- **New Communications Plan**
- **Reinstituted Agency newsletter**
- **Timeline Project on the web**
- **Distribute summary of discussion from each Board of Directors meeting and AGM**
- **Distribute “Reporting Back to Communities” pamphlet**
- **New Communications and Environmental Specialist position filled**

Self - Assessment of IEMA - 2011

- **Ongoing contribution to effective environmental management at Ekati**
- **Ongoing contribution to development of ICRP**
- **Resolution of difficulties with three-year Environmental Impact Report**
- **Ongoing improvement to Air Quality Monitoring Program**
- **Ongoing effective collaborative approach**

Thank you



Questions?

Independent Environmental Monitoring Agency

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Email: monitor1@yk.com

Website: www.monitoringagency.net

Giant Mine Remediation Project  

Case Studies on Oversight: Selected Canadian Public Sector Examples and Emerging Private Sector Best Practice



The Champagne Room—Yellowknife NT (5006 Franklin Avenue)
March 6-7, 2012

Giant Mine Remediation Project  

Overview of Presentation:

- Factors in Oversight
- Case Studies
- Private Sector Best Practice
- Discussion

Giant Mine Remediation Project  **Canada**

Factors in Oversight:

A variety of factors are discussed in literature regarding oversight bodies.
Six factors appear repeatedly as common elements.

- Access to Information
- Funding
- Secure Tenure
- Legal Basis
- Independence of Overseers
- Obligation to Respond

Three case studies illustrate oversight bodies and these factors in their design.

Giant Mine Remediation Project  **Canada**

Case Studies:
Northern Saskatchewan Environmental Quality Committees (EQC)
– N. Saskatchewan



Giant Mine Remediation Project 

Case Studies:
 Sydney Tar Ponds Remediation Project – Nova Scotia




TP1/TP6 – Core Dredge & Wash Brook Channels/ Solidification/Stabilization
 TP2 – Material Processing Facility
 TP7 – Tar Ponds Surface Cap
 CO1 – Core Dredge Slurry & Core Dredge Slurry Contactor Sluiceway Removal
 CO2 – Tailings Solidification/Stabilization
 CO3 – Vertical Cutoff Walls
 CO4 – Core Dredge Surface Cap
 CO5 – Core Dredge Slurry Brook Sluiceway Removal & Groundwater Collection System
 CO6 – Water Treatment Plant
 CO7 – On-site Engineering Landfill
 CO8 – On-site Engineering Landfill
 CO9 – On-site Engineering Landfill

Giant Mine Remediation Project 

Case Studies:
 The Britannia Mine – British Columbia




Squamish
 BRITANNIA MINE
 Fanny Creek
 Magnesia Creek
 Howe Sound
 Bowen Island
 Burrard Inlet
 Vancouver



Case Studies:
Northern Saskatchewan Environmental Quality Control Committees

- The Northern Saskatchewan Environmental Quality Control Committees (EQC) were established on the recommendation of the Joint Federal/Provincial Review Panel.
- The Government of Saskatchewan Northern Affairs facilitates the EQCs and the supporting body Northern Mines Monitoring Secretariat (NMMS) to inform northerners about Saskatchewan's uranium mining industry.
- The NMMS staff's mission is to help EQC members understand uranium mining and to assist the EQCs in making informed comments about the industry.
- The EQCs are currently made up of representatives from northern municipal and First Nation communities that are impacted by northern mining operations.
- There are three EQC subcommittees representing 30 communities: the West side with 12 members; South Central with 19 members; and the Athabasca Basin with six members. EQC members are nominated by their communities.
- <http://www.fnmr.gov.sk.ca/nseqc>
- [http://www.ameco.com/northernsk/ameco In north/northern connections/environmental quality committee/](http://www.ameco.com/northernsk/ameco%20In%20north/northern%20connections/environmental%20quality%20committee/)



Case Studies:
Northern Saskatchewan Environmental Quality Control Committees

Oversight Body	Established	1995
The Northern Saskatchewan Environmental Quality Committees (EQC)		
➤ Members nominated by "primary impacted communities" and appointed by Minister of Saskatchewan Northern Affairs		
Responsibilities		
The EQCs carry out the following activities:		
✓	Review available data generated by mining companies and report to government;	
✓	Review concerns and/or complaints in the areas of environmental protection, worker health and safety and socioeconomic benefits for northerners;	
✓	Submit annual reports to the provincial government, which describe the Committee's activities, conclusions and recommendations;	
✓	Advise industry and government regulators on environmental and socio-economic issues related to uranium mining operations;	
✓	Participate in federal and provincial regulatory reviews (e.g. Licensing);	
✓	Provide a forum for the consideration of "traditional knowledge" for incorporation into uranium development.	

Giant Mine Remediation Project 

Case Studies:
 Factors Key to Oversight in the Northern Saskatchewan EQCs

Factors Key to Oversight	The Northern Saskatchewan Environmental Quality Committees
Access to Information	Access to data and reports produced by mining companies
Funding	Support staff in the Northern Mines Monitoring Secretariat
Secure Tenure	Adopted by Government of Saskatchewan for length of project
Legal basis	No mandate to intervene, but strength of EQCs is very influential
Independence of Overseers	Members nominated by communities, although appointed by Minister
Obligation to Respond	Gov't and Industry address the issue and provide reasons, although not mandatory

Giant Mine Remediation Project 

Case Studies:
 Sydney Tar Ponds Remediation Monitoring Oversight Board – Nova Scotia

- The Sydney Tar Ponds Remediation Monitoring Oversight Board (RMOB) originated from a Joint Panel Review in 2006 of the Sydney Tar Ponds and Coke Ovens Remediation Project.
- The Sydney Tar Ponds and Coke Ovens Remediation Project is a cost sharing agreement of Public Works and Government Services Canada and the Nova Scotia Department of Transportation and Infrastructure Renewal.
- The sites will be cleaned up on a cost-shared basis over eight years, with the federal government contributing up to \$280 million and the province, \$120 million.
- Nova Scotia Environment is the lead environmental regulator, but Environment Canada also regulates aspects of project.
- The Project also supports community engagement with a Community Liaison Committee and the Aboriginal Set Aside program.
- <http://www.tarpondscleanup.ca>

Giant Mine Remediation Project  **Canada**

Case Studies:

Sydney Tar Ponds Remediation Monitoring Oversight Board – Nova Scotia

Oversight Body	Established	2006
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The Remediation Monitoring Oversight Board (RMOB)

- Three members with expertise in government, academia or consulting in the environmental field. The members were appointed by the Minister of Nova Scotia Environment.

Responsibilities

The RMOB was assigned the following responsibilities:


- ✓ To review project permits and approvals issued by NSE;
- ✓ To review any project regulatory issues that arise;
- ✓ To take public input into account and provide the public with the opportunity to provide feedback on regulatory issues;
- ✓ To report annually to the Minister on project regulatory management issues.

Giant Mine Remediation Project  **Canada**

Case Studies:

Factors Key to Oversight in the Sydney Tar Ponds Remediation Monitoring Oversight Board

Factors Key to Oversight	The Remediation Monitoring Oversight Board
Access to Information	Access to permits and regulatory reports
Funding	Project funding
Secure Tenure	Oversight board exists the duration of project
Legal basis	No mandate to intervene
Independence of Overseers	Members appointed by Minister of Nova Scotia Environment
Obligation to Respond	No response necessary



Giant Mine Remediation Project

Case Studies:

The Britannia Mine – British Columbia

- The Britannia Mine Remediation Project involves the remediation of Britannia Mine which operated as copper and zinc mine from 1904 – 1974.
- The mine generated over 40 million tonnes of tailings deposited into subtidal slope of Howe Sound in area of Britannia Beach.
- The Province of British Columbia assumed responsibility for remediation in April 2001 and Ministry of Agriculture and Lands is responsible for delivery of project.
- Provincial and federal regulatory agencies include Ministry of Environment, Environment Canada and Fisheries and Oceans Canada.
- Quarterly update reports are provided to the Squamish Nation.
- Ongoing input and consultation occurs with an external Technical Advisory Committee (TAC).
- Project website offered detailed technical documents. www.britanniamine.ca



Giant Mine Remediation Project

Case Studies:

The Britannia Mine – British Columbia

Oversight Body	Established	2003
-----------------------	--------------------	-------------

Technical Advisory Committee (TAC) comprised of local stakeholders, agency staff, and mining industry technical experts.

Responsibilities


The Technical Advisory Committee:

- ✓ Provide technical oversight;
- ✓ Participate in the development of the Overall Remediation Plan (ORP);
- ✓ Monitor program structure and implementation;
- ✓ Participate in technical workshops.

Giant Mine Remediation Project  Canada

Case Studies:
 Factors Key to Oversight in the Britannia Mine

Factors Key to Oversight	Technical Advisory Committee
Access to Information	Review technical reports
Funding	Project funding
Secure Tenure	Provision of Britannia Remediation Project
Legal basis	No mandate to intervene
Independence of Overseers	Internal and external members
Obligation to Respond	No response necessary

Giant Mine Remediation Project  Canada

Comparison of Case Studies:

Factors	Saskatchewan's EQCs	Sydney Tar Ponds' RMOB	Technical Advisory Committee
Access to Information	✓	✓	✓
Funding	✓	✓	✓
Security of Tenure	✓	✓	✓
Legal basis			
Independence	✓	✓	✓
Obligation to Respond			

Giant Mine Remediation Project 

Best Practice:
Best Practice in the Private Sector

Stakeholder Advisory Panels
 The purpose of the panel may vary depending on the needs and context of the interested parties.

SUSTAINABILITY REPORTING
 Advice on report content, materiality, process, etc.
 Commentary - published comments and recommendations

STRATEGY ADVICE
 Strategic advice (policy, practices, issues, trends)

PERFORMANCE MONITORING
 Review and comment on performance

WHY Stakeholder Advisory Panels?

- ✓ Identify priorities and tasks
- ✓ Accelerate learning
- ✓ Input to strategy
- ✓ Transparency and credibility

Giant Mine Remediation Project 

Best Practice:
Best Practice in the Private Sector

Stakeholder Advisory Panels

TYPES OF STAKEHOLDERS	TYPES OF EXPERTISE	GEOGRAPHICAL SCOPE
<ul style="list-style-type: none"> • NGO • Aboriginal • Investors • Labour • Academic • Business partners • Local Community 	<ul style="list-style-type: none"> • Corporate governance • Business ethics • Environmental specialists • Social development • Safety • Local and traditional knowledge 	<ul style="list-style-type: none"> • Local • Regional • Provincial • National • International

Giant Mine Remediation Project 

Best Practice in the Private Sector:

Examples from the Private Sector

Strategic Advisory Panel on Selenium Management



- In January 2010 an independent panel of experts was set up to review selenium in coal operations management for British Columbia and Alberta.
- The Strategic Advisory Panel on Selenium Management released its first report on June 30th, 2010.
- A final report in 2012 includes the continual role of the Stakeholder Advisory Panel.
- The report outlined a series of recommended actions and operating principles for the sustainable management of selenium in operations.
- The Panel's recommendations were based on research conducted during site visits to Teck's coal operations and input collected from a cross-section of stakeholders including government, community members, and environmental organizations, as well as First Nations representatives.

Giant Mine Remediation Project 

Best Practice in the Private Sector:

Examples from the Private Sector

Mining Association of Canada Community of Interest Advisory Panel



- In 2004 the Community of Interest (COI) Advisory Panel was established with the Towards Sustainable Mining initiative.
- MACs COI members include around 20 individuals from Aboriginal and labour organizations, stakeholder communities, environmental and social NGOs, and the financial community, along with members of the MAC Board and other mining industry representatives.
- COI Advisory Panel monitors TSM's progress and serves as an external source of knowledge and experience.
- The panel meets twice a year to provide the following mandate:
 - Help MAC members and communities of interest improve the industry's performance
 - Foster dialogue between the industry and its communities of interest
 - Help achieve the goals of TSM
- Annually, following external verification, the COI Advisory Panel reviews selected companies' verified results. This review is an important part of the TSM verification system.



Independent Environmental Oversight: Legal and Institutional Aspects

Associate Professor Natasha Affolder
UBC Faculty of Law



a place of mind

THE UNIVERSITY OF BRITISH COLUMBIA

The Age of Accountability



Key Concepts



Oversight

Independence

3

Independent Environmental Oversight

In almost all jurisdictions where environmental impact assessment is practiced, follow-up is dubbed the weakest stage.



4

Multiple Roles for Oversight Agencies



- Communication/
Transparency
- Technical
Oversight
- Restoring Public
Trust/ Inspiring
Public Confidence
- A Check on
Regulatory
Capture and
Group-Think

5

The Experience of Independent Oversight Agencies: Lessons Learned

Lesson #1: Independent oversight agencies have numerous potential drivers, many of which are relevant to Giant Mine.

Lesson #2: Not all bodies bearing the label “independent oversight agency” are necessarily independent, nor do they necessarily provide oversight functions.

Lesson #3: The primary role of an oversight body needs to be determined prior to choosing an appropriate form and structure.

6

Lessons Learned (contd)

Lesson #4: Composition should follow function.

Lesson #5: Access to information is paramount.

Lesson #6: Guaranteed funding is necessary.

Lesson #7: Proponents should be obliged to respond to recommendations from oversight bodies.

Lesson #8: Oversight bodies should have a legal base.

7



Lesson #9: Independent oversight bodies can promote effective environmental management through identifying gaps in environmental monitoring and management.

8

Questions to ask

- What rights and powers does the oversight body require to carry out its mandate?
- What recourse will it have if its rights and powers are infringed?
- How can the body ensure its recommendations are listened to?
- Will the oversight agency have access to information?
- How will effective communication channels between the oversight body and the Project Team be forged and maintained?
- What will the qualifications of the overseers be?
- Will the oversight body have the financial resources to monitor and to oversee monitoring results?
- How will Aboriginal groups and community members participate in and advance the work of the monitoring agency?

9

Lesson #10: The meaningful involvement of Aboriginal groups in oversight and monitoring requires careful attention and devoted capacity funding.



10

Lesson #11: The impacts of natural resource projects are differentially experienced. Ensuring community participation requires an attentiveness to the gendered impacts of resource development.

Lesson #12: Ensuring an oversight body's independence can be critical to ensuring public confidence.



11

**The full text of our report on independent
environmental oversight can be found at:**

[http://www.reviewboard.ca/upload/project_ document/EA0809- 001_Independent_Environmental_Oversig ht_Report_1299265834.PDF](http://www.reviewboard.ca/upload/project_document/EA0809-001_Independent_Environmental_Oversight_Report_1299265834.PDF)



a place of mind

THE UNIVERSITY OF BRITISH COLUMBIA

The Stillwater Good Neighbor Agreement

A Model for Citizen and Industry Cooperation

Oversight of the
Giant Mine Workshop
Yellowknife, NT
March 6&7, 2012

Charles Sangmeister
Member, Stillwater Oversight Committee
President, Stillwater Protective
Association



Overview

- Background
 - Good Neighbor Agreements (GNA)
- Stillwater Mining Company/Northern Plains GNA
 - Parties Involved
 - Negotiations
 - Implementation
- Success and Challenges
- Current Activities
- Conclusions

Background

- Good Neighbor Agreements
 - Between community groups and industrial complexes
 - Approximately fifty worldwide
 - Designed to address local issues of concern related to social and environmental impacts
 - Housing
 - Traffic
 - Noise
 - Odors
 - Water and Air Quality
 - Handshake Agreements, Memorandum of Understanding

Stillwater Mining Company/Northern Plains GNA

- A legally binding contract between Stillwater Mining Company, Northern Plains Resource Council, Stillwater Protective Association, and Cottonwood Resource Council
- A partnership between the local community and the company to protect and enhance quality of life and the environment while encouraging responsible economic development

The Councils



- Northern Plains Resource Council
 - Grassroots, non-profit organization founded in 1972
 - Comprised of general and local affiliate membership
 - Organizing Montana citizens to protect water quality, family farms and ranches, and unique quality of life
- Stillwater Protective Association
 - Founded in 1975 in response to mining and other conservation issues.
 - Based in Stillwater County
- Cottonwood Resource Council
 - Founded in 1988 by citizens concerned with impacts of proposed hard rock mining and other large-scale developments
 - Based in Sweet Grass County

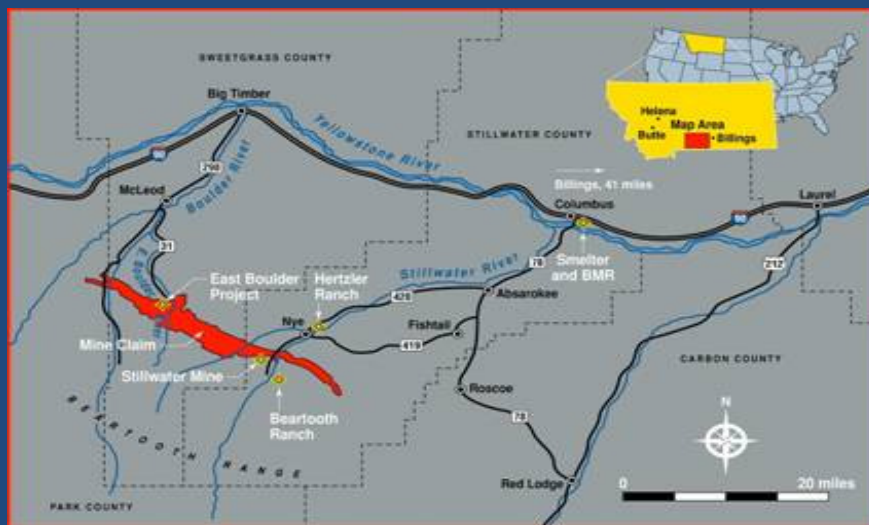
Good Neighbor Agreement Task Force

- Comprised of Northern Plains GNA Manager, oversight committee members, technology committee members, and technical consultants
- Objectives:
 - coordinate knowledge of the activities between the two mines
 - Gain better knowledge of data and technical issues
 - Refine our understanding of mine-related issues

Stillwater Mining Company



Stillwater Mining Locations



Stillwater Mine



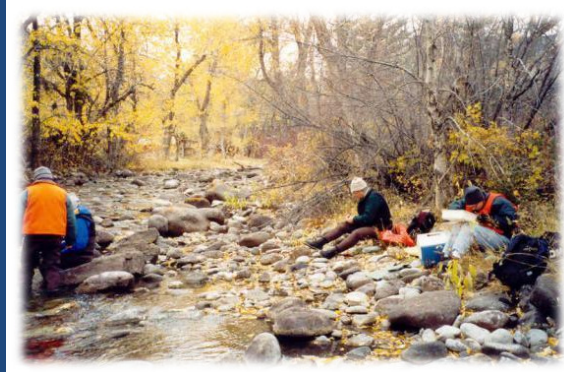
East Boulder Mine



Negotiation of the GNA

- Relationship began in late 1980's
- Formal negotiations initiated in 1999
- GNA Signed in May 2000

- Legally Binding
- Science-based Decision Making
- Third Party Technical Consultants
- Dispute Resolution
- Provides access to technical and confidential information.
- Binding to SMC and all successors



Objectives

- Minimize potential adverse influences on local communities, economies, and environment
- Maintain Baseline Water Quality, Biological Integrity and Beneficial Uses of surface waters and ground waters
- Establish and maintain open communication
- Provides for Councils to participate in SMC decisions



Implementation

- Councils participate in
 - planning / inspections / audits / agency correspondence / water quality monitoring / waste minimization practices / reclamation plans / bonding
- Qualifying expenses for Councils participation
 - Administrative Expenses
 - Technical Assistance
 - Independent water sampling
 - Implementation of Supplemental Environmental Activities
 - Annual GNA budget of approximately \$100,000.

GNA Oversight Committees

Make decisions, make recommendations, and take actions on issues arising under the agreement by majority vote

- Stillwater Oversight Committee
 - Exploration Activities
 - Water quality
 - Hertzler tailings impoundment
 - Accident mitigation
- East Boulder Oversight Committee
 - Groundwater investigation
 - State mine permitting process
 - Exploration activities

GNA Implementation

Technology Committee

- Meets annually or as required
- Focus on mine optimization and waste minimization technologies
 - Pilot project investigating the feasibility of paste tailings technology
 - Nitrogen source control study
- Annual New Technology Reviews



GNA Implementation

Water Quality

- Completed Baseline Water Quality Reviews
- Established water quality limits through the Tiered Trigger Level Framework that exceed federal and state regulations
- The Councils participate in a rigorous water monitoring program
 - Quarterly water monitoring reports/independent data review
 - Council participation in SMC monitoring
 - Independent Water Quality Sampling
 - Fisheries Monitoring
 - Supplemental Monitoring



Traffic Reduction

The GNA worked to establish a busing and traffic reduction program that has significantly reduced accidents and congestion on rural roads.



Stillwater River



Conservation Easements

- GNA required all private land owned by SMC to be placed under conservation easement
- GNA prevented any mine sponsored housing outside existing towns
- Rural character of local communities preserved

GNA Amendments

- Update contract through negotiation process
 - Reflect Council-approved current practice
 - Framework for ongoing implementation
 - Incorporate significant accomplishments



Stillwater Mining Company



- GNA is attractive to Stillwater because it has the “potential to reduce conflict while enhancing environmental and economic stability”
- Councils meet annually with SMC board of directors
- Strong public acknowledgement and advocacy for Good Neighbor Agreement

Successes

- Development of trust and common ground between traditional adversaries.
- Company and Councils buy-in
- Defined dispute resolution and enforcement processes
- No measureable change to surface water quality

Challenges

- Implementation phase was more lengthy and contentious than anticipated
- community involvement and volunteer commitments
- Communication issues
- Water quality concerns

Current GNA Activities

- Nitrogen source control study
- Environmental Impact Statement
- Bond review
- Water quality concerns
- SMC exploration planning
- Expanding communications with the community
- Joint SMC/Councils Newsletter



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Full text of the Stillwater/Northern Plains GNA can be found online:
www.northernplains.org/good-neighbor-agreement

Conclusions

- GNAs can be effective tools to mitigate environmental and community related impacts from mining and other industrial operations
- Stillwater/Northern Plains GNA has been successfully implemented for 11 years
 - Provides a forward-looking, proactive, and preventative approach to potential issues
 - Establishes a mechanism for transparent communication and conflict resolution

Giant Mine Remediation Project  

Current Management and Oversight at Giant Mine



Octavio Melo, AANDC
Champagne Room, Yellowknife, NWT
March 7, 2012

Giant Mine Remediation Project  

Overview

- Roles and responsibilities, legislative framework and responsibilities
- Giant Mine Cooperation Agreement
 - ✦ Giant Mine Oversight Committee
- Independent Peer Review Panel
- Giant Mine Community Alliance
- Current Commitments



-
- Giant Mine Remediation Project** Canada
- ### Existing Government Oversight and Accountability Mechanisms
- Government of Canada
 - ✧ Parliament
 - ✧ Commissioner of Environment & Sustainable Development
 - ❖ Audits
 - ❖ Petition Process
 - ❖ Panel of Environmental Advisors



Existing Government Oversight and Accountability Mechanisms

- Government of Canada (Cont'd)
 - ✧ Treasury Board Policies
 - ❖ Policy on Management of Real Property
 - ❖ Policy on the Management of Projects
 - ✧ Department of Aboriginal Affairs and Northern Development
 - ❖ Report on Plans and Priorities
 - ❖ Departmental Performance Report
 - ❖ Audits and Evaluations



Existing Government Oversight and Accountability Mechanisms

- Other Legislation and Programs
 - ✧ MVRMA
 - ❖ Co-management Boards (MVEIRB, MVLWB)
 - ❖ Water Licence (MVLWB)
 - ❖ NWT Environmental Audit
 - ❖ CIMP



Giant Mine Remediation Project

Roles:

- The Giant **Management Board** is established by the Aboriginal Affairs and Northern Development Canada **Project Leader** (Assistant Deputy Minister – Northern) as the senior oversight, issue resolution and decision-making body.
- The **Management Board** is accountable for the delivery of the project in compliance with legal, regulatory and policy requirements.
- The **Management Board** is composed of the following organizational representatives:
 - Director General – Natural Resources and Environment, Aboriginal Affairs and Northern Development Canada
 - Regional Director General – Aboriginal Affairs and Northern Development Canada
 - Regional Director General – Western Region, Public Works and Government Services Canada.



Giant Mine Remediation Project

Roles:

- The **Project Leadership Committee (PLC)** is the senior body with responsibility for management and execution of the project; accountable for achievement of the objectives within the financial constraints of secured funding.
- The **PLC** acts as the link between the project implementation team and the Management Board.
- The PLC is composed of the following organizational representatives:
 - Director – Northern Contaminated Sites Program, Aboriginal Affairs and Northern Development Canada
 - Acting/Assistant Deputy Minister, Department of Environment and Natural Resources
 - Director – Giant Mine Project, Aboriginal Affairs and Northern Development Canada
 - Director – Giant Mine Project, Public Works and Government Services Canada



Giant Mine Remediation Project

Giant Mine Cooperation Agreement

- Entered into by the Governments of Canada and NWT in March 2005.
- Formalizes the arrangement to cooperate and coordinate care & maintenance, regulatory approvals, and remediation.
- Does not transfer jurisdictional responsibilities or liabilities that each party otherwise may have with respect to the Giant Mine site.
- The parties agreed to the following key goals:
 - ✧ Protect human health, public safety, and the environment;
 - ✧ Finalize and implement an effective care & maintenance plan;
 - ✧ Finalize and implement a remediation plan that is cost effective;
 - ✧ Maximize territorial economic opportunities; and,
 - ✧ Co-operate in the spirit of smart regulations to achieve a timely, efficient and cost effective process based on accountability and performance.



Giant Mine Remediation Project

Giant Mine Oversight Committee:

- Established In accordance with the Cooperation Agreement between the Governments of Canada and the NWT.
- Has equal federal and territorial representation:
 - ✧ Regional Director General, NWT Region, AANDC; and
 - ✧ Deputy Minister, Environment and Natural Resources, GNWT
 - ✧ Deputy Minister of Municipal and Community Affairs, GNWT, sits as an observer.
- Committee members report to their Ministers, or designate.
- Provides a forum to co-operate on the administration of the agreement.



Giant Mine Remediation Project

Independent Peer Review Panel:

- Acts as an independent expert resource on technical issues for the Remediation Project (along with Independent Engineer).
- Responsible for:
 - ✧ Reviewing major design and conceptual changes and technical issues that are beyond the scope of the existing project (e.g. new technological developments); and
 - ✧ Reviewing and endorsing final project proposals prior to submission in order to fulfill regulatory requirements.
- Reports to the Management Board.



Giant Mine Remediation Project

Giant Mine Community Alliance:

- Established in 2003 to share information about the project and relay public concerns and issues about the remediation of Giant Mine.
- Membership:
 - ✧ YKDFN (observer status)
 - ✧ NSMA
 - ✧ Canadian Public Health Association – NWT Chapter
 - ✧ NWT Mine Heritage Society
 - ✧ Ecology North on behalf of ENGOs
 - ✧ Northern Territories Federation of Labour
 - ✧ Yellowknife Chamber of Commerce
 - ✧ City of Yellowknife
- Meets regularly with the Project Team for project updates.



Current Commitments:

- Establish:
 - ❖ EMS Working Group
 - ❖ Aboriginal and Government Body
 - ❖ Independent Engineer
- Third Party Audits under the EMS
- Public performance reporting:
 - ❖ Quarterly Reports – operational and environmental data
 - ❖ Annual Reports – summary and review of data
 - ❖ State of the Environment Reports
 - ❖ Summary, review and interpretation of data; and recommendations
 - ❖ Period: 3 years during 15-year remediation period; 5 years thereafter



Closing Remarks