

Bathurst Sustainable Development

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February 6, 2008

Re: MMER Information Session Submission

To: Environment Canada
351 Saint-Joseph Boulevard
Gatineau, Quebec
Ottawa, Ontario
K1A 0H3

% Chris Doiron, Chief, Mining and Minerals

Please accept this submission of comments on the Proposed Amendments of Schedule 2 of the Metal Mining Effluent Regulations (MMER) to add Tail Lake and the Northwest Arm of Second Portage Lake as TIA for the Doris North and Meadowbank mining projects and also the expression of our general concerns for the direction that the involved RA's are making on current and future mining and industrial approval in Canada, from Brenda Kelley, of Bathurst Sustainable Development, as delegate for the Canadian Environmental Network.

Our organization and Canadians in general expect that we can have confidence that our government departments, RA and Cabinet will insure, through a rigorous and comprehensive environmental impact assessment, that the environmental protection of our eco systems, natural capital, current and future fresh water supplies will not be at risk from mining operations, the legacy of the mine or any other industrial activities.

We also expect that the precautionary principal and the highest level of sustainable development principles and practices will rule in our decisions about how or if to allow a mining operation to be permitted to be developed and operate, especially in the case of the potential impacts of future climatic variability and the life sustaining value of available fresh water resources on this planet for the future.

Bathurst Sustainable Development has the highest regard and respect for many of the excellent staff at Environment Canada. However, we have the sense that some of the staff, reviewers and decision makers are under increasing pressure to “hurry up” or “speed up” their reviews and final decisions when it comes to industrial and mining approvals these days. While we understand that the length of time and level of required rigor in comprehensive reviews can be frustrating, time consuming and also expensive for the proponents, good science cannot and should not be rushed. It also means that the detail and steps of a comprehensive review are in place and required for important reasons and for lawful protection purposes to guide us and help us reach decisions upon which we can be certain of the outcomes we state. These processes of assessment and science should not be allowed to be skipped, over looked or not completed in order to speed up or streamline the approval process.

After reading the documents provided for the two proposed mines we cannot say that our confidence level in the hypotheses presented, the level of assessment conducted, and the decision to streamline the approval process provides us with certainty that the selection of the final TIA option and proposed certificate of approval will not result in risk to the environment.

We were very concerned to learn of the possibility, though yet to be legally confirmed by the courts, that the decision made by the parties involved for the Doris North project not to be required to undergo a Comprehensive Study as is required by Section 21 of the Canadian Environmental Assessment Act may be in violation of Canadian environmental law. As we understand it, the trigger for CEEA is quite clear, and in this case if upheld, the Doris North project should have triggered the comprehensive study requirement.

Our concern is that in our governments attempt to “streamline the regulatory process” for mining approvals it may inadvertently result in “oversight” in compliance or lead to allowing applications which are just slightly above the CEEA trigger to be allowed to proceed without the Comprehensive Study required.

We hope that the comments and questioning here today will encourage our government and the regulatory approval departments to ensure that issues of uncertainty that still exist for these two proposals are revisited and also that the acceptance by our government and regulatory authorities to continue to support the destruction of natural fish bearing fresh water bodies and lakes does not continue in Canada.

Specific Points and Issues of Concern

- 1.** We do not support allowing natural fish bearing lakes to be designated as Tailings Impoundment Areas (TIAs) by adding natural fish bearing Canadian lakes to Schedule 2 of the MMER and we recommend that the Canadian government stop allowing and participating in destroying our lakes.
- 2.** We were extremely disappointed to read that all of the RA's and the proponents involved in the permitting and application processes were all aware that both of these applications are in fact only a small part of what are actually in the end to be two very large mining operations. We were very disappointed to learn that our RA's supported and participated in encouraging and advising the proponent to break the actual projects into tiny pieces, in order to diminish the total proposed EE of the proposed operations on the lakes and region. Once the RA's were made aware of the actual scope and size of the total final operation size, they should have required that the entire project undergo a comprehensive review based on what the fully developed final mining operation size would be. In light of this, we believe that all of the impacts listed, mitigation strategies, habitat compensation plans and other hypotheses and technical information are based on incorrect inputs and information and cannot therefore be substantiated.
- 3.** In one of these cases, the attempt to streamline the regulatory process is resulting in mining applications being only required to go through an EA screening instead of a full comprehensive review. In still other cases, the size of the proposed operation should have triggered a full comprehensive study but it was not required by the RA. It appears that a level of consultation and study is being skipped in the attempt to give final approval for using the lake in as little as 8 months. We were very shocked and disappointed to learn that the two lakes under discussion here today were already sent to Gazette I before this information session was even able to occur. This does not install confidence in us or in Canadians of the validity of the approval process and TIA options chosen.
- 4.** In the past two years, two cases, one in Labrador and one in NS have resulted in approvals being given for an arm of an existing lake or river that drains into a watershed to be reclassified as a TIA and used for mine waste. This precedence and practice will provide case studies and examples for other mining proponents to also request using lakes and streams in or near Canadian watersheds. This is not acceptable to us and should not be allowed especially in Provinces where the geographical size of the land mass results in hydrological drainage being more closely connected and therefore more easily impacted by either fugitive effluent, out of compliance accidental releases caused by either human error or equipment failure or abandoned mining facilities with continuing effluent or AMD.

- 5.** In one of the mining cases before us today in two different places within its documentation it states two different opinions on if the lake will be able to sustain aquatic life after the mine closes. In face to face discussions with the proponents and DFO regulators at the information session we were not presented with additional facts to increase our level of confidence and there appears to still be uncertainty on this matter. It appears that the hypnosis presented and their outcomes are dependent on a variety of “unknowns”. If we cannot confirm in advance that the lake will not be permanently destroyed either as a viable fish habitat or as a functioning biological eco system then we should not give approval for the operation to proceed or an alternative tailings disposal and management process should be selected.
- 6.** Habitat compensation plans and hypothesis that are being accepted appear weak in both of the cases, minimum and unsubstantiated by a full peer reviewed external assessment.
- 7.** The precautionary principle appears to have been abandoned in some considerations in the rush to approve the proposal.
- 8.** The fast and less expensive selection of using the nearest lakes for mine waste disposal is not an ecologically sound decision when compared to the future risk, the amount of and the permanent loss of eco systems and natural capital.
- 9.** Schedule 2 was added to the MMERs in 2002 without ANY prior discussion in the multi-year multi-stakeholder review process. That amounts to a regulatory amendment without public consultation.
- 10.** There is no evidence being presented that HADD compensation plans can and do actually compensate for the destruction of an entire freshwater eco-system. Some of the HADD options presented are so weak that fluctuations in water levels in the region could result in the proposed compensation not functioning as proposed resulting in a “net loss” of biological diversity, fish habitat and fish populations.
- 11.** If countries such as the U.S.do not allow natural fish bearing lakes to be used as a TIA for mining or other industrial waste then Canada should not allow it either.
- 12.** Our concern is also that regulators will now allow the use of the lakes option more frequently in the governments rush to approve increased mining operations in Canada.
- 13.** Protection of current and future fresh water resources and wetland areas that already are or that may need to be included in the future for expansion of watersheds for our urban centers, towns and villages are at risk from this less rigorous process and the decisions to choose to allow the lakes to be used for TIA’s.

14. Climate Change: The hypothesis presented of the future impacts of climate change on evapo transpiration rates, hydrological anomalies, changes in precipitation rates, reliability of freezing and thawing projections and the unsecure and unsubstantiated reliance on future permafrost integrity have not been adequately peer reviewed by external third part experts or evidence presented to substantiated the hypothesis and provide confidence that the scenarios presented are indeed certain and that the “best available option” to protect eco systems and ground water resources selected. The accelerated rate of climate change leaves even the IPCC scientists uncertain of firm timelines for projections.

When we questioned the proponent of the Doris North Mine representative at the information session, he admitted that he already had to change his inputs once since temperatures are rising. Climate Change is a moving target, things are changing and the rate of change is accelerating especially in the Northern eco regions, this we know for certain. The future scenarios presented for permafrost integrity in the technical documents for these two project cannot be substantiated with certainty based on the under conservative inputs used and the total lack of scientific third party independent peer review of the projected timelines, impacts and scenarios.

15. Inputs to Models: The mining industry in general is in need of standardization of its data sources for selecting inputs to models and calculations used to determine the future impacts of climate change on TIA’s and mining infrastructure especially in Canada’s most Northern Regions. Currently, winter roads built in the North, whose engineers of the proponents of past mining approval applications said would not thaw and would remain stable for many more years, are now collapsing. In our experience, the inputs, assumptions and hypothesis used are almost always too under conservative and our governments and regulators should be requiring that future scenarios use “overly conservative” inputs to allow for errors in judgment. We believe this also is attributable to a general lack of acceptance of climate change facts, projections and realities by both the proponents and the RA’s.

16. In both cases, notification processes and timelines of the intentions to use natural fish bearing waters for tailings impoundments did not give the general population of Canada, who are also stakeholders of the MMER and future impacts from current decisions, enough time or notification to become informed on what is being proposed and respond with their concerns before the lake is already reclassified as a TIA.

17. Citizens should not have to choose between their environmental future and economic development. If the economic development is sustainable there should be no impact on the environment that cannot be mitigated.

18. Doris North was given a Screening-level assessment under the Canadian Environmental Assessment Act (the lowest level of EA). By law, it should have received a Comprehensive Study-level assessment, for these reasons:

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- a) The proposed Doris North gold mine has a mill processing capacity of 668 tonnes per day.
- b) This exceeds the gold mine threshold on the Comprehensive Study List of 600 tonnes per day.
- c) The Screening-level assessment for Doris North commenced after October 2003.
- d) In October 2003, Parliament amended and strengthened Section 21 of the Canadian Environmental Assessment Act.
- e) We understand that the Federal Court considered the amendments to Section 21 in a recent court case [see *MiningWatch v. Canada et al* (September 25, 2007)]. The Federal Court held that if a proposed gold mine has a processing capacity of higher than 600 tonnes per day, by law it requires nothing less than a Comprehensive Study-level assessment.

On behalf of Bathurst Sustainable Development we wish to thank you for allowing us to participate in this process.

Yours sincerely,

Brenda Kelley,

on behalf of BSD and CEN