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Giant Steps: Behind the Scenes of the Historical Mine Environmental Agreement

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After many years of arduous negotiations, it was finally announced last week that the clean-up of Giant Mine will soon be under the watchful eye of an independent monitoring group.

The monitoring agency, set up as part of the landmark Giant Mine Environmental Agreement, is one of, if not the first of its kind in Canada. There are a number of monitoring agencies for active mines across the country – but having a well-funded independent agency with the ability to force binding arbitration watching over a government cleanup project marks an important moment in the development of environmental monitoring in Canada.

Kevin O'Reilly of [Alternatives North](#) was a key player in the long process to get the agreement signed. EDGE sat down with O'Reilly to chat about the history of the agreement, the challenges he and others faced getting governments to be transparent, and what the agreement means for the hundred-year clean-up of Giant Mine.

Take us back to the closure of Giant Mine. What was the situation?

In April of 1999 we had a gold mine here in Yellowknife that had been operating for close to 60 years and had created a terrible environmental legacy. Royal Oak went into receivership and through some tortuous legal proceedings it eventually became a public liability. When it went into receivership, the security under the water license was \$400,000. The last cost-estimate that's publically available for the remediation of the mine is \$903 million. Good deal for somebody, maybe the shareholders, the senior management. But for the public, not a good deal.

The Department of Indian Affairs and Northern Development inherited the site at 12 midnight and at 12:01 they gave the rights to mine the property to the other gold mine on the other side of Yellowknife, Miramar Con. It continued as an above-ground-only operation, and Miramar Giant, which was set up as a shell company, did not inherit any environmental liability. The idea was they would pay some money from the profits of the operation into a reclamation security trust to help finance at least a little bit of the remediation. Well, I asked the officials at the time how much money Miramar was actually putting into that fund, and I never got a straight answer. I think they put in zero dollars over the five years that they operated the site. In 2004, Miramar Giant went into bankruptcy and then the whole site became a crown liability again.

Who was responsible for the site after these bankruptcies?

From the time that the federal government took it over there was some issue about who actually had liability beyond just the feds. Well, GNWT did because they had a surface lease that they had given for the site... And guess how much security they asked for under that arrangement? You got it! Zero!

There was a series of negotiations between the GNWT and the feds over who should assume liability and how that should be dealt with, and they signed what was called the Cooperation Agreement. What it did was limit the liability the GNWT would incur from the mine site to \$23 million, I believe – and believe me, cleaning up stuff on the surface is probably going to cost a lot more than \$23 million. I think the price tag to take down the roaster complex was \$25 million.

So they got to limit their liability for the surface to \$23 million paid out over a few years. But they had to accept freezing the arsenic underground forever, and they also had to agree the surface would only be remediated to an industrial standard for arsenic contamination.

How did this go over with other groups with a stake in the project?

Well, guess who one of the creditors was? The City of Yellowknife. Royal Oak hadn't paid their taxes, so to allow Miramar to operate as a surface mine only, the GNWT and the feds put a lot of pressure on the City to forgive the taxes. They said, in lieu of those taxes, we will give you a portion of the surface lease of the mine around the townsite area. They told the City at the time, "Oh we're going to remediate that area along with the rest of the site so it can be used for municipal purposes." I was on council at the time and I said, "I don't like this, get it in writing, this is like buying a truck without looking under the hood." And guess what? Within six months there was the cooperation plan and they agreed to only remediate the surface to an industrial standard; if the City wants to use the surface lease for anything else, they're responsible for paying for the remediation. The GNWT sold us down the river so they could limit their liability!

Fairly early into the project there was a push, led in part by yourself, for environmental assessment of the federal government's clean up plan. Why were you pushing for this?

So people in the community, not just me, were saying. “Wait a second, the federal government actually allowed this to happen without managing things properly or foreseeing what was going to happen? They didn’t ask for financial security? They’re now managing the site and are developing a plan for remediation – and that wasn’t done very collaboratively.”

During the development of the plan I kept asking them, “Is this project going to go for an environmental assessment?” Because an environmental assessment is an opportunity for someone independent to have a look at it and understand what the impacts are and if there’s some improvements that could be made. I could never get a straight answer out of DIAND or AANDC.

Once the remediation plan was developed, and it was largely developed with technical consultants, they advised AANDC: “You should submit this project for an environmental assessment.” That was the clear, unambiguous advice. But guess what? They wouldn’t do it. The plan was finished in 2007 or 2008, and they had to apply for a water license. They filed the application with the Mackenzie Valley Land and Water Board, and nobody would pull the trigger for an EA: not AANDC, not GNWT, Environment Canada, DFO, the Mackenzie Valley Land and Water Board itself. This is one of Canada’s most infamous, if not most expensive, and worst contaminated sites and no one would pull the trigger for an environmental assessment!

How did the environmental assessment eventually get triggered?

Well, the Yellowknives Dene First Nation, they wanted it to go to an environmental assessment and wrote a letter asking that that happen, but they didn’t have the authority to make a mandatory referral. So nobody was going to listen to them, apparently, and nobody did listen to them. But I knew the Mackenzie Valley Resource Management Act, and because this project is wholly within municipal boundaries, city council has the power to make a mandatory referral. I had just stepped off council and knew some folks who were still there, talked to the chief of YKDFN, talked to the MLA, talked to some other folks, and said, “You know, no one else is willing to take this to an EA but we think it’s in the City’s best interest and we think it’s in the public’s best interest.” So a number of us went to a city council meeting and council voted unanimously that night to make a referral.

At the time, many groups argued an environmental assessment wasn’t necessary and would slow down the commencement of the remediation. What did you hope to learn from it?

I’ve always said there needs to be independent oversight, there needs to be ongoing investment into something better than freezing the stuff under the ground, and there needs to be a lot more thought put into minimizing the perpetual-care requirements of the site, because freezing the stuff underground, that requires monitoring and management forever. Where is the money going to come from for that? How do we tell people thousands of years into the future? How do you keep the stuff frozen? How do you replace the thermosyphons that are going to do this? How do you preserve the documents? So the referral of the project to an environmental assessment allowed for the space and time for those things to be considered.

What are the most important parts of the environmental agreement that emerged from the assessment?

We now have an independent oversight body that is going to be established as a nonprofit society. I’m not aware of anything similar to this for a contaminated site or a remediation project in Canada, done in

a legally binding fashion with assured funding, the ability to hire staff and independence built right into the agreement. We're going to have investment into ongoing research and development and public reporting; every 20 years there's to be a review of the project and there's a legal requirement for a perpetual-care plan. And through the negotiation of the agreement itself, I think it's helped us establish better working relationships, and what we might call the social license for the project to move forward.

How does the Giant Mine Oversight Body work?

The oversight body will receive \$650,000 a year, to pay for an office, staff, the board operations itself. We've talked about a staff of two, three, four people, and the idea is to have a storefront office. It will have a board of directors that will consist of one person that is appointed by each of the parties that signed the agreement: Canada, the GNWT, the YKDFN, the City, the North Slave Metis, and Alternatives North. They're not to act as representatives of the groups, though; they're to function as an independent entity.

They'll review the design of the monitoring program, the results, the management plans, reports, applications that are submitted to the Mackenzie Valley Land and Water Board. They'll also have the ability to look at the public reporting that's done under the environmental agreement and have specific roles to play in things like the review of what to do with Baker Creek.

So they review the scientific side of things but also the public engagement side of things, and can give advice on how that's working. And if they don't like something they can trigger a dispute resolution process: try to resolve it informally, then get into a more formal process that can include mediation and binding arbitration if it goes that far.

I understand the ability to force binding arbitration is quite unique among monitoring agencies. How is this different from the organizations monitoring the diamond mines?

With the diamond mine monitoring groups they can't initiate the dispute resolution process, they have to wait for someone else to do something. With the Giant Mine Monitoring group, the only party that can initiate dispute resolution process is the oversight body itself.

The context is different of course: Giant is not a private sector development or proposal, it's a government project, so government was a bit leery about giving aboriginal governments and an NGO the ability to trigger dispute resolution against itself. Effectively we said, let's put some faith and trust into the oversight body and give them the authority to trigger dispute resolution themselves, if they feel something is inadequate.

There's also a research component to the monitoring agency. How does this work?

There will also be a separate pot of \$250,000 that's made available for ongoing research and development. Collectively, we thought that the best way to approach that would be to develop a state-of-knowledge report, what do we know about arsenic and how it could be treated, or if we were to try to get the stuff from underground, how could you do that in the safest way possible. I think the idea is within the first five years to develop that state-of-knowledge report, then we develop the research priorities and go out and get the work done.

Do you think the environmental agreement and the monitoring agency could be a model for other projects?

Oversight seems to be gaining a lot of favour. Look at even our national context, what's happened with the Senate and police forces. There is a legitimate role for oversight in our society, especially when large sums of money are involved, or multiple roles and responsibilities, and where you have situations where there's a lot of mistrust. People really want to have some independent oversight body. With Giant Mine, there's still a lot of mistrust and apprehension and concern about this. It's a way to begin to try to build the social license and try to establish a firmer foundation for various interests to work together.