Long-term monitoring and management of federal contaminated sites such as the Giant Mine in the Northwest Territories

Petition: 345

Issue(s): Aboriginal affairs, human/environmental health, toxic substances, and waste management

Petitioner(s): Alternatives North

Date Received: 9 January 2013

Status: Completed

Summary: The petitioner is concerned about the federal government's long-term monitoring and management of contaminated sites. The petitioner asks the government to explain its policy framework in this area, including long-term funding for perpetual care of contaminated sites. Referring to the remediation plan for the Giant Mine, located in the Northwest Territories, the petitioner raises questions about the frozen block method chosen for arsenic-contaminated waste arising from the mine's past operations.

Federal Departments Responsible for Reply: Aboriginal Affairs and Northern Development Canada, Environment Canada, Health Canada, Treasury Board of Canada Secretariat

Petition

Alternatives North
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January 9, 2013

Scott Vaughan
Commissioner of the Environment and Sustainable Development
Office of the Auditor General
240 Sparks Street
Ottawa ON
K1A 0G6

Re: Petition on Perpetual Care of Contaminated Sites and the Giant Mine

Dear Mr. Vaughan

Please accept this petition pursuant to s. 22(1) of the *Auditor General Act*.

Background Information

The Giant Mine in Yellowknife, Northwest Territories is one of the largest and most contaminated sites in Canada. Since 1999 when the site became a public liability, the federal government with the Government of the Northwest Territories, has managed Giant Mine and developed a Remediation Plan. That Plan is now the subject of an ongoing environmental assessment by the Mackenzie Valley Environmental Impact Review Board. The Plan requires perpetual care of the site forever, especially with regard to freezing the 237,000 tonnes of arsenic trioxide underground. Long-term monitoring and management, or perpetual care, will be necessary to maintain other aspects of the project such as fencing of open pits, inspection and repair of engineered covers on tailings, and water treatment. The federal government has spent over $160 million on the site to date, and another at least $480 million will be required to implement the Plan. Having followed the Giant Mine and its remediation for many years, it is not clear how the principles of sustainable development have been applied to government efforts to remediate the site and meaningfully involve the public.

I believe that the majority of the following questions fall within the responsibilities of the Minister of Aboriginal Affairs and Northern Development and to a lesser extent, the Treasury Board Secretariat and the Minister of the Environment.

Federal Policy Framework for Perpetual Care of Federal Contaminated Sites

1. a) Does the federal government have a policy framework for the perpetual care of federal contaminated sites such as the Giant Mine?

   b) If not, when will one be developed?

   c) How will the public be consulted about the framework and its development?

   d) How will the policy framework be applied to Giant Mine?

2. How does the federal government account for and calculate the liability for perpetual care sites in the Public Accounts?

3. a) Please explain if there are any special funding mechanisms for the funding of perpetual care at federal contaminated sites.

   b) If there is nothing beyond the usual annual appropriation cycle currently in use, please explain why and what steps will be taken to study and implement other options.

Actions to Prevent Further Public Liabilities and Perpetual Care of Contaminated Sites

4. What specific legislative and regulatory changes have been put in place by Aboriginal Affairs and Northern Development Canada, Environment Canada and the Treasury Board since 1999 to prevent further uncontrolled mine abandonments and public liabilities from mining on federal lands?

5. Please explain why there is no legal or regulatory requirement for financial security and closure plans for mining operations on federal Crown lands in the Northwest Territories and how this meets the needs of future generations.

Perpetual Care and Giant Mine

6. Please provide a detailed justification for the trade-offs that were made in choosing the frozen block method for arsenic containment at the Giant Mine even though it requires perpetual care forever and how the needs of future generations were considered.

7. Does Aboriginal Affairs and Northern Development Canada acknowledge that the frozen block method for remediation of the Giant Mine underground arsenic is an interim solution and that further strategic investment in ongoing research and development is required into a more permanent solution?

8. a) Please explain if minimizing perpetual care requirements was a primary goal or objective of the Giant Mine Remediation Plan.

   b) Please explain how perpetual care requirements for Giant Mine have been minimized.

9. Does the Giant Mine Remediation Plan build on best practices and lessons learned from perpetual care from nuclear waste sites and other federal contaminated sites in Canada and around the world?

10. Please provide an explanation and any evidence that Canada has complied with each of the following articles of the United Nations Declaration of the Rights of Indigenous Peoples in remediating the Giant Mine site:

    a. Article 10
       Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

b. Article 28
1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

c. Article 29
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

d. Article 32
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

11. Please explain what, if any, research or study by the federal government has been undertaken on long-term funding options for the perpetual care of the Giant Mine site.

12. Please provide a detailed explanation of how the frozen block method, the lack of any specific long-term funding mechanism for the perpetual care of the Giant Mine, and no specific plans for investment in ongoing research and development meets the needs of future generations?

I look forward to receiving the Government of Canada's response to these questions.
Sincerely,

[Original signed by Kevin O'Reilly]

Kevin O'Reilly
Giant Mine Coordinator
Alternatives North
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Email: kor@theedge.ca
[top of page]

Minister's Response: Aboriginal Affairs and Northern Development Canada

29 May 2013

Mr. Kevin O'Reilly
Giant Mine Coordinator
Alternatives North
PO Box 444
YELLOWKNIFE NT X1Z 2N3

Dear Mr. O'Reilly:

I am writing in response to Environmental Petition No. 0345, to the Commissioner of the Environment and Sustainable Development, regarding *Perpetual Care of Contaminated Sites and the Giant Mine*.

Enclosed you will find Aboriginal Affairs and Northern Development Canada's response to your petition.

I understand that the Minister of the Environment, the Minister of Health, and the President of Treasury Board will be responding separately to the questions that fall under their respective mandates.

I appreciate this opportunity to respond to your petition, and trust that you will find this information helpful.

Sincerely,

[Original signed by Bernard Valcourt, Minister of Aboriginal Affairs and Northern Development]

Bernard Valcourt, PC, QC, MP

Encl.

c.c.: The Honourable Peter Kent, PC, MP
The Honourable Leona Aglukkaq, PC, MP
The Honourable Tony Clement, PC, MP
Mr. Scott Vaughan

Aboriginal Affairs and Northern Development Canada (AANDC) Response to
GIANT MINE: ENVIRONMENTAL PETITION NO. 0345
PERPETUAL CARE AND GIANT MINE

4. What specific legislative and regulatory changes have been put in place by Aboriginal Affairs and Northern Development Canada, Environment Canada and the Treasury Board since 1999 to prevent further uncontrolled mine abandonments and public liabilities from mining on federal lands?

The coming into force of the *Canadian Environmental Protection Act* (CEPA, 1999) and its regulations in 2000 enacted the "polluter pays principle" which embodies the

standard that users and producers of pollutants and wastes should bear the responsibility for their actions. This concept applies to private and public bodies including federal departments.

In Canada, regulations that govern the requirement of security deposits for current and future mining projects are issued in accordance to permit and licence conditions under the applicable federal, provincial, and territorial legislation.

Since 1999, there have been four Water Boards established under the *Mackenzie Valley Resource Management Act* (MVRMA). The Mackenzie Valley Land and Water Board (MVLWB), and the regional Boards (the Gwich'in Land and Water Board, the Sahtu Land and Water Board and the Wek'eezhii Land and Water Board) are responsible for the administration of the *Northwest Territories Waters Act* in the Mackenzie Valley (excludes the Inuvialuit Settlement Region). The MVLWB and AANDC continue to collaborate and develop guidelines, procedures, and protocols to assist the regulation of advanced mineral exploration projects and mine development which includes mine closure and reclamation and security deposits. Further information is provided within Item 5.

5. Please explain why there is no legal or regulatory requirement for financial security and closure plans for mining operations on federal Crown lands in the Northwest Territories and how this meets the needs of future generations.

AANDC and the MVLWB have roles defined by the MVRMAand the *Northwest Territories Water Act (NWTWA)* in regard to the security deposit amount and form for closure and reclamation requirements (i.e.: Closure and Reclamation Plan). The MVLWB is responsible for setting the amount of the security deposit (financial security) held against a project and AANDC is responsible to approve the form of security and administer the security deposit on behalf of the federal Crown.

The Board ensures that an appropriate security deposit amount and rationale are established as conditions of the water license and/or land use permit authorizations, to ensure that the cost of reclamation, which includes shutdown, closure, and post-closure are borne by the proponent rather than the Crown.

The MVRMA, the NWTWA, Policy, and Closure and Reclamation Plans (CRPs) apply to all proponents. The MVLWB through input from government, Aboriginal governments, interveners, and the public, reviews and approves the CRPs. AANDC's position on reclamation security of mineral developments in the Northwest Territories is outlined within the 2002 "Minesite Reclamation Policy for the Northwest Territories." The Policy was established in response to public and government concern regarding insolvencies and abandoned mine properties, and associated environmental liabilities.

Accordingly, the Policy identifies a number of principles for mine site reclamation to avoid such occurrences in the future, including:

- Mine site reclamation should reflect the collective desire and commitment to operate under the principles of sustainable development, including the "polluter pays" principle;

- Every new mining operation should be able to support the cost of reclamation. Existing mining operations will also be held accountable for their reclamation liabilities;
- Adequate security should be provided to ensure the cost of reclamation, including shutdown, closure and post-closure, is born by the operator of the mine rather than the Crown; and
- Financial security requirements related to reclamation should be clearly set out in water licences, land lease and other regulatory instruments, though there may be circumstances where security requirements may be more appropriately dealt with through an agreement.

Since the *NWT Waters Act* (1993) (and previous amended *Northern Inland Waters Act* [1970]), the appropriate regulatory Boards have required security deposits for industrial and mine development water licences. The Department maintains records on security deposits.

Citations below are from on-line public sources.

Security Deposit Reference:
(Source: Justice Canada):
The *NWT Waters Act, Sec. 12(1) states:*
12. (1) The Board may fix the amount of security required to be furnished by an applicant under subsection 17(1) of the Act in an amount not exceeding the aggregate of the costs of

(*a*) abandonment of the undertaking;
(*b*) restoration of the site of the undertaking; and
(*c*) any ongoing measures that may remain to be taken after the abandonment of the undertaking.

Mine Closure and Reclamation References:
(Source: MVLWB):

- Aboriginal Affairs and Northern Development Canada (AANDC, NT Region). **Mine Site Reclamation Policy for the NWT 2002.**
- Aboriginal Affairs and Northern Development Canada (AANDC, NT Region). **Mine Site Reclamation Guidelines 2007.**
- Aboriginal Affairs and Northern Development Canada (AANDC, NT Region). **Cold Regions Cover System Design Technical Guidance Document (MEND Report 1.16.5c).**
- Mackenzie Valley Land and Water Board, SLWB, GLWB, WLWB and Aboriginal Affairs and Northern Development Canada. **DRAFT Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories.**

6. Please provide a detailed justification for the trade-offs that were made in choosing the frozen block method for arsenic containment at the Giant Mine even

though it requires perpetual care forever and how the needs of future generations were considered.

There has been a great deal of material submitted and commitments made by (AANDC) before and throughout the Environmental Assessment of the Giant Mine Remediation Project being undertaken by the Mackenzie Valley Environmental Impact Board (the Review Board). The reader is directed to the Review Board's website (http://www.reviewboard.ca) which includes such key documents as the Developers Assessment Report (DAR of October 2010); the Giant Mine Public Hearings Official Transcripts (September 2012); voluminous responses to Information Requests throughout the Giant Environmental Assessment Process, and the Developer's Closing Statement (October 2013).

In brief, the frozen block method was selected by a thorough evaluation of all possible methods for dealing with the arsenic trioxide dust. The evaluation process was led by a Technical Advisor team that included many of Canada's leading experts in the relevant disciplines. The process lasted three years and included over 40 public consultation sessions, three multi-day public workshops, and a comprehensive review by a completely separate group of experts known as the Independent Peer Review Panel. The main reasons why the frozen block method was selected are that it will mitigate the current risks associated with the arsenic trioxide dust without creating any new risks for workers or the environment, and it will keep the dust safely contained over the very long term. The assessment concluded that the frozen block method provides the lowest risk to workers' health and safety, and the lowest risk of short-term arsenic release. Over the long term, the frozen block method was found to present a "low" risk of future arsenic release. Although some of the other methods were found to provide a "very low" risk of arsenic release in the long term, they only did so at the cost of much higher short-term risks.

The needs of future generations were considered throughout the evaluation process. Taking those effects into account, the Project Team accepted the conclusions of the Technical Advisor and the Independent Peer Review Panel that the frozen block method is the best option for long-term management of the arsenic trioxide, both for this generation and future generations. In fact, the selected frozen block method requires a very significant expenditure by the current generation to minimize the environmental, human health, and financial risks to future generations.

Other reviewers have also concluded that the process leading to the selection of the frozen block method was thorough. In 2008, the Mackenzie Valley Environmental Impact Review Board accepted that the Developer had done a thorough job at looking at alternatives for managing the arsenic trioxide, and ruled that a further review of the process to be outside the scope of the Environmental Assessment. During the public hearings in 2012, the Chair of the Review Board re-iterated that position (Giant Mine Project Team Final Closing Comments, Page 3, Paragraph 3).

7. Does Aboriginal Affairs and Northern Development Canada acknowledge that the frozen block method for remediation of the Giant Mine underground arsenic is

an interim solution and that further strategic investment in ongoing research and development is required into a more permanent solution?

The frozen block method is being designed as a long-term commitment, not an interim solution.

The process used to select the frozen block method clearly demonstrated that it is the best option available at this time. One of its strength is that it can be designed to operate indefinitely with minimal risk to or burden on, future generations.

It is reasonable to ask whether a better option might be available sometime in the future. As stated in the Giant Mine Project Team Final Closing Comments (Page 5, Paragraph 2), "… the long-term nature of the hazard means that periodic re-assessments of new technology are warranted …. " In a separate information request response, the Project Team made the commitment to "… review emergent technologies on a regular basis in the future … look at technologies that are being used throughout the world and … remain current through national and international technical networks. Emergent technologies that are identified in such a review will be submitted to the Independent Peer Review Panel, or a similar group, on a 10-year cycle for a more detailed technical examination of applicability to the specific situation at the Giant Mine."

The Project Team believes that the periodic review of emerging technologies is more appropriate than targeted research and development. The exhaustive review of alternative technologies completed by the project's Technical Advisor showed that there are currently no reasonable "alternative targets" for R&D. And the same review showed that significantly better alternatives will require advances in many fields including in mining, re-processing, and waste disposal methods.

8. a) Please explain if minimizing perpetual care requirements was a primary goal or objective of the Giant Mine Remediation Plan.

As stated in the Developer's Assessment Report and several other sources, the specific objectives of the Giant Mine Remediation Plan are to:

1. Manage the underground arsenic trioxide dust in a manner that will prevent the release of arsenic to the surrounding environment, minimize public and worker health and safety risks during implementation, and be cost-effective and robust over the long term;
2. Remediate the surface of the site to the industrial guidelines under the *NWT Environmental Protection Act*, recognizing that portions of the site will be suitable for other land uses with appropriate restrictions;
3. Minimize public and worker health and safety risks associated with buildings, mine openings, and other physical hazards at the site;
4. Minimize the release of contaminants from the site to the surrounding environment; and
5. Restore Baker Creek to a condition that is as productive as possible.

Although the above lists does not use the wording "minimize perpetual care requirements," careful examination shows that outcome to be implicit in the stated

objectives, or at least fully consistent with them. For example, an arsenic trioxide management plan that is "cost effective and robust over the long term" is also one that would involve a minimum of perpetual care requirements.

b) Please explain how perpetual care requirements for Giant Mine have been minimized.

As explained by AANDC at the Review Board Public Hearings, perpetual care consists of two distinct components: one is the physical systems, and the other is the long-term management and oversight of those systems.

The physical systems have all been designed to require minimum intervention over the very long term. For example, the frozen blocks will be robust to changes in climate, very easy to monitor, and require minimum maintenance.

Regarding the management and oversight of the physical systems, AANDC benefited from advice provided by parties to the Environmental Assessment. As stated by AANDC during hearings in support of the Environmental Assessment, "Constructive input from the parties to the EA has led to changes in our thinking about the management of perpetual care and a commitment to developing a perpetual care management plan … the perpetual care management plan will include records management, scenario analysis, communications with future generations, as well as land-use constraints and transitional planning" (Giant Mine Public Hearings Official Transcripts, September 12, p.332-336).

9. Does the Giant Mine Remediation Plan build on best practices and lessons learned from perpetual care from nuclear waste sites and other federal contaminated sites in Canada and around the world?

As stated in a previous information request response, “The Giant Mine Remediation Project Team (Project Team) and its Technical Advisor are constantly examining similar projects throughout North America and beyond for lessons learned”. That response goes on to list some of the many mine closure and remediation projects reviewed by the Project Team, and the lessons relevant to the Giant Mine Project (Information Request Round 2, Review Board #07, Response 1).

The Project Team is developing a perpetual care management plan that will include records management, scenario analysis, communications with future generations, as well as land use constraints and transitional planning. These commitments are consistent with the materials provided by the parties to the Environmental Assessment regarding perpetual care of nuclear waste and other contaminated sites around the world.

An additional project component that reflects current best practices and lessons learned elsewhere is the commitment to developing an Environmental Management System. As explained by AANDC during Environmental Assessment public hearings (Giant Mine Public Hearings Official Transcripts, September 13, 2012, page 90) an environmental management system (EMS) is a tool to integrate a multitude of environmental protection requirements into a comprehensive system … "An EMS allows us to more effectively

manage, report, and respond to our obligations. It allows us to be readily auditable, thereby increasing transparency ... The EMS working group of the parties has been established and the project is committed to ensuring an appropriate mechanism that will allow for stakeholder input during the implementation phase in areas such as adaptive management."

10. Please provide an explanation and any evidence that Canada has complied with each of the following articles of the United Nations Declaration of the Rights of Indigenous Peoples in remediating the Giant Mine site:

a) Article 10
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

b) Article 28
1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

c) Article 29
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

d) Article 32
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resource.

The United Nations Declaration on the Rights of Indigenous Peoples is a non-legally binding aspirational document that calls upon states and Indigenous peoples to work together towards a better future. It sets out a number of principles that should guide harmonious and co-operative relationships between Indigenous peoples and states, such as reconciliation, justice, democracy, respect for human rights, non-discrimination, equality, partnership, good faith and mutual respect. Canada strongly supports these principles and believes that they are consistent with the Government's approach to working with Aboriginal peoples.

Canada also supports the full and effective participation of Aboriginal peoples in government decision-making processes that affect them. However, Canada has placed on record its concerns regarding the Declaration's principle of "free, prior and informed consent" when used as a veto. A complete veto power over government action for Aboriginal groups would be incompatible with the principle of reconciliation, which

requires the balancing of the rights and interests of Aboriginal groups with those of the federal government and other Canadians.

As noted in Canada's Statement of Support endorsing the Declaration, the Canadian constitution and legal framework will continue to be the cornerstone of this Government's efforts to promote and protect the rights of Aboriginal peoples.

11. Please explain what, if any, research or study by the federal government has been undertaken on long-term funding options for the perpetual care of the Giant Mine site.

As stated in earlier responses to Alternatives North as well as other parties to the Environmental Assessment and the Review Board, it is AANDC's view the budgeting and approval of expenditure authority required for all government projects are the appropriate mechanisms to address funding of the perpetual care requirements associated with the Giant Mine Remediation Project (Information Request Round 1, Alternatives North #22).

Funding for federal contaminated sites is normally provided by federal custodial departments. Under regular provisions, departments are allocated funding for contaminated sites via departmental allocations from Treasury Board during the annual financial cycle in main and supplemental estimates. For the highest priority federal contaminated sites funding is provided via the Federal Contaminated Sites Action Plan (FCSAP) on a cost-shared basis. A Secretariat under Environment Canada supports the 15-year FCSAP program.

In the case of Giant Mine, the Minister of Aboriginal Affairs and Northern Development is the federal minister responsible for the project. It seeks funding through the normal budgetary process, and has had the benefit of the FCSAP in order to be able to provide funding (approximately $160 million) over the last number of years. Given the scale of this project and the long-term nature of the liability, there is a governance and accountability regime (Giant Project Management Board) in place internally to ensure that objectives are achieved and that the project stays within scope, schedule, and budget (*Giant Mine Public Hearings Official Transcripts Sept 14, 2012, pages 108 – 110).*

As stated in a number of ways throughout the Giant Mine Environmental Assessment process, AANDC has a high-level of confidence that the Giant Mine site will remain a government priority and that funding will continue to be made available to meet its legal, health, and safety obligations. AANDC has also stated that it has confidence in future funding as a result of the health and safety implications of the remediation effort, as well as the high profile and public interest in the project.

AANDC's Project Team staff summarized during the Giant Environmental Assessment public hearings, "I think it's important to underpin that this project is about protecting human health and safety"… and "all governments have the responsibility and the accountability to protect human health and safety." Finally it was noted that, "funding for this project to date has been stable and consistent. The current approach has allowed us to effectively manage cost variations and ensure the protection of human health and

the environment." It was also noted that AANDC has spent $160 million to date in what has been a stable source of funding to allow us to get to the plan that was being reviewed before the Review Board. And that, "It's important to know that ministers that are responsible…have been made aware of the ongoing costs in a -- in full costing. As the project advances that -- those costs are continually shared…with decision makers." (Giant Mine Public Hearings Official Transcripts Sept 14, 2012, pages 124 – 125)

12. Please provide a detailed explanation of how the frozen block method, the lack of any specific long-term funding mechanism for the perpetual care of the Giant Mine, and not specific plans for investment in ongoing research and development meets the needs of future generations?

This question is addressed in the responses to Questions 6, 7, 8, 9 and 11. This question adds a reference to investment in research and development, presumably meaning research into alternatives to the frozen block method. As noted in the response to Question 7, the frozen block method is being designed as a long-term commitment rather than an interim solution, but that emerging technologies will be periodically reviewed to determine if improvements are possible.

The strategy of periodic review also reflects the knowledge that industry is investing substantial R&D in areas that could ultimately have application at Giant Mine. For example, uranium mining companies are continually improving methods to remotely extract hazardous ores, and copper mining companies are racing to find environmentally responsible methods for processing arsenic-rich copper ores. The proposed 10-year time frame for a first review is long enough to allow some of those efforts to bear fruit.

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Minister's Response: Environment Canada

29 April 2013

Mr. Kevin O'Reilly
Giant Mine Coordinator
Alternatives North
P.O. Box 444
Yellowknife NT X1A 2N3

Dear Mr. O'Reilly:

I am writing in response to your Environmental Petition no. 345, to the Commissioner of the Environment and Sustainable Development, regarding the perpetual care of federal contaminated sites and the Giant Mine. Your petition was received in Environment Canada on January 9, 2013.

Enclosed you will find Environment Canada's response to your petition. I understand that the Minister of Aboriginal Affairs and Northern Development, the Honourable

Bernard Valcourt, P.C., M.P., and the President of the Treasury Board, the Honourable Tony Clement, P.C., M.P., will be responding separately to questions that fall under their respective mandates.

I appreciate this opportunity to respond to your petition, and I trust that you will find this information helpful.

Sincerely,

[Original signed by Peter Kent, Minister of the Environment]

The Honourable Peter Kent, P.C., M.P.

Enclosure

c.c.: The Honourable Bernard Valcourt, P.C., M.P.
The Honourable Tony Clement, P.C., M.P.
Mr. Neil Maxwell, Interim Commissioner of the Environment and Sustainable Development

Environment Canada Response to Environmental Petition no. 345 regarding the perpetual care of federal contaminated sites and the Giant Mine

Question 4: What specific legislative and regulatory changes have been put in place by Aboriginal Affairs and Northern Development Canada, Environment Canada and the Treasury Board since 1999 to prevent further uncontrolled mine abandonments and public liabilities from mining on federal lands?

Response: The coming into force of the *Canadian Environmental Protection Act, 1999* and its regulations in 2000 enacted the "polluter pays principle," which embodies the standard that users and producers of pollutants and wastes should bear the responsibility for their actions. This concept applies to private and public bodies, including federal departments.

In Canada, regulations that govern the requirement of security deposits for current and future mining projects are issued in accordance with permit and licence conditions under the applicable federal and provincial/territorial legislation. In the case of the Giant Mine, pursuant to the *Northwest Territories Waters Act*, section 12 of the *Northwest Territories Waters Regulations* outlines the conditions that the Mackenzie Valley Land and Water Board may require for security (SOR/93-303).

Under the *Fisheries Act*, the *Metal Mining Effluent Regulations* (MMER) promulgated in 2002, specify that the full requirements of the MMER apply to a mine from the moment the facility first becomes subject to the Regulations until such time it becomes a recognized closed mine as specified in the Regulations. Applying to become a recognized closed mine is a voluntary decision of each owner/operator, and all mines remain subject to the full requirements of the MMER, including biological monitoring, for at least three years following the end of commercial operations. Recognized closed

mines are subject to the pollution prevention provisions of subsection 36(3) of the *Fisheries Act*, but also remain subject to the requirements of section 33 of the MMER which requires that the owner or operator provide updated information on ownership any time that the ownership is transferred. The intent of this provision is to have up-to-date information on ownership of all metal mines that were at any time subject to the MMER, including those that are no longer in commercial production.

The owner/operator of the Giant Mine (i.e., Aboriginal Affairs and Northern Development Canada) has not applied to become a recognized closed mine. For this reason, the facility remains subject to the *Fisheries Act* and the full requirements of the MMER. It is also important to note that the Giant Mine has been operating in full compliance with the effluent requirements of the MMER.

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Minister's Response: Health Canada

10 May 2013

Mr. Kevin O'Reilly
Giant Mine Coordinator
Alternatives North
P.O. Box 444
Yellowknife, Northwest Territories X1A 2N3

Dear Mr. O'Reilly:

This is in response to your environmental petition no. 345 dated January 9, 2013, addressed to Mr. Scott Vaughan, the former Commissioner of the Environment and Sustainable Development (CESD).

In your petition you raised concerns regarding the perpetual care of contaminated sites and the Giant Mine. After careful analysis and review, it has been determined that the other departments to whom your petition was sent are best placed to respond to your questions and provide appropriate and relevant information.

I understand that the Minister of Aboriginal Affairs and Northern Development, the Minister of Environment, and the President of the Treasury Board will be responding to the questions.

I appreciate your interest in this important matter.

Sincerely,

[Original signed by Leona Aglukkaq, Minister of Health]

Leona Aqlukkaq

c.c. The Honourable Bernard Valcourt, P.C., Q.C., M.P.
The Honourable Peter Kent, P.C., M.P.

The Honourable Tony Clement, P.C., M.P.
Mr. Neil Maxwell, CESD

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Minister's Response: Treasury Board of Canada Secretariat

22 April 2013

Mr. Kevin O'Reilly
Giant Mine Coordinator
Alternatives North
P.O. Box 444
Yellowknife, Northwest Territories
X1A 2N3

Dear Mr. O'Reilly:

I am writing in response to Environmental Petition no. 0345 regarding Perpetual Care of Contaminated Sites and the Giant Mine, in Yellowknife, Northwest Territories, which was received by the Commissioner of the Environment and Sustainable Development on January 9, 2013 and forwarded to departments on January 22, 2013.

Enclosed you will find the Treasury Board Secretariat's responses to questions 1, 2, 3 and 4 in your petition. The Minister of Environment Canada and the Minister of Aboriginal Affairs and Northern Development Canada will be responding separately to questions that fall under their respective mandates.

I appreciate this opportunity to respond to your petition, and trust that you will find this information helpful.

Yours sincerely,

[Original signed by Tony Clement, President of the Treasury Board]

The Honourable Tony Clement, P.C., M.P.

Enclosure

c.c.: The Honourable Peter Kent, P.C., M.P.
The Honourable Bernard Valcourt, P.C., Q.C., M.P.
Mr. Neil Maxwell, Commissioner of the Environment and Sustainable Development

Responses from Treasury Board of Canada Secretariat
April 12, 2013

Federal Policy Framework for Perpetual Care of Federal Contaminated Sites

Question 1:
a. Does the federal government have a policy framework for the perpetual care of federal contaminated sites such as Giant Mine?

The Treasury Board *Policy on Management of Real Property* (2006) (**http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12042&section=text**) requires that federal real property be managed in a sustainable and financially responsible manner, throughout its life cycle. The policy articulates principles for the management of federal property including requirements to identify and manage site contamination. The policy requirements specific to sound environmental management require Deputy Heads to ensure that:

6.1.11 Real property is managed in an environmentally responsible manner consistent with the principles of sustainable development. The environmental condition of real property must be ascertained to determine whether it is or can be made environmentally compatible with its current and intended use. All available, relevant environmental information must be disclosed to anyone interested in occupying the real property.

6.1.12 Known and suspected contaminated sites are assessed and classified and risk management principles are applied to determine the most appropriate and cost-effective course of action for each site. Priority must be given to sites posing the highest human health and ecological risks. Management activities (including remediation) must be undertaken to the extent required for current or intended federal use. These activities must be guided by standards endorsed by the Canadian Council of Ministers of the Environment (CCME) or similar standards or requirements that may be applicable abroad. The costs of managing contamination caused by others must be recovered, when this is economically feasible.

6.1.13 The contamination of real property or negative impacts on the environment through the use or permitted third-party use of real property is avoided. In the event of contamination, immediate and reasonable action must be taken to protect the health and safety of persons and the environment, prior to assessing a future course of action.

The Treasury Board *Policy on Management of Real Property* (2006), like all Treasury Board policies, is principles-based. These principles provide departments with the flexibility to tailor technical solutions (such as remediation and long-term monitoring) to specific site requirements.

This policy framework is supported, in the case of contaminated sites, by the establishment in 2005 of the Federal Contaminated Sites Action Plan, which provides departments with technical advice and guidance on site assessment, remediation and long-term monitoring.

b. If not, when will one be developed?

Please see previous response.

c. How will the public be consulted about the framework and its development?

Please see previous response.

d. How will the policy framework be applied to Giant Mine?

Please see previous response.

Question 2:
How does the federal government account for and calculate the liability for perpetual care sites in the Public Accounts?

The accounting for remediation liabilities related to contaminated sites is driven by the accounting policies of the Government of Canada which are based on *Canadian Public Sector Accounting Standards*.

Question 3:
a. Please explain if there are any special funding mechanisms for the funding of perpetual care at federal contaminated sites.

b. If there is nothing beyond the usual annual appropriation cycle currently in use, please explain why and what steps will be taken to study and implement other options.

There are many instances of ongoing government programs that operate under the annual appropriations regime (annual financial cycle). Funding of perpetual care at federal contaminated sites is well supported by annual appropriations.

Pursuant to the *Financial Administration Act,* the Government requires Parliament's authority to make payments. Authority is provided through legislation – either specific legislation that deals with a particular type of payment (i.e. statutory) or an appropriation act which provides authority for a fiscal year.

Most government activities span several years; annual appropriations are made in this context and complement longer-term planning.

- In this instance, the liabilities related to contaminated sites are recognized and accounted for in the Public Accounts of Canada. Activities to remediate or for their perpetual care are planned over a multi-year and long-term horizon.
- Annual appropriations provide Parliamentarians with a regular opportunity to scrutinize government expenditures and raise questions. This includes expenditures and plans related to the remediation or perpetual care of contaminated sites. In effect, annual appropriations increase the transparency and visibility of these initiatives. Statutory expenditures are not necessarily as transparent, and are not reviewed with the same frequency. At this time, we have no plans to explore other options.

Actions to Prevent Further Public Liabilities and Perpetual Care of Contaminated Sites

Question 4:
What specific legislative and regulatory changes have been put in place by Aboriginal Affairs and Northern Development Canada, Environment Canada and the Treasury Board since 1999 to prevent further uncontrolled mine abandonments and public liabilities from mining on federal lands?

The Treasury Board and Treasury Board Secretariat do not make such legislative or regulatory changes.