

**EMAB Board Meeting Minutes
March 25, 2004
EMAB Board Room Yellowknife, NT**

Present:

Bob Turner, Chair, North Slave Metis Alliance
Floyd Adlem, Vice-Chair, Government of Canada
Jane McMullen, Alternate for GNWT - RWED
Johnny Weyallon, Dogrib Treaty 11 Council
Florence Catholique, Lutsel K'e Dene First Nation
Lawrence Goulet, Yellowknives Dene First Nation
Erik Madsen, Diavik Diamond Mines Incorporated
John Morrison, Government of Nunavut
John McCullum, Executive Director
Angus Martin, Alternate, Yellowknives Dene First Nation

Absent:

Doug Doan, Secretary-Treasurer, Government of the NWT
Doug Crossley, Kitikmeot Inuit Association

Minute taker:

Michele LeTourneau, Communications Coordinator

Meeting started with welcome from the chair at 9:15

Quorum verified.

Opening prayer by Florence Catholique

ITEM 1

Approval of agenda

Executive Director requests addition to "other business:" EMAB has scheduled a Board meeting for June in Lutsel K'e. Could that trip include a site visit to Diavik?

Motion # 01-04-25-03

Accept agenda as amended.

Moved: Floyd Adlem

Seconded: John Morrison

Carried: Unanimously

Approval of minutes

Discussion on winter road: is there a protocol for inspections? Does EMAB get a report? Decided that that can be discussed in Other Business, including having DIAND inspector to talk about what they do with it.

Also add update on ammonia hearing to Other Business.

John Morrison adds comments to previous discussion on ISO 14001, based on minutes from Feb 11-12. There is a limited value to making sure mining companies have mandatory certification. A company is registered based on what they are doing. You can't register a company that has nothing to look at yet. A point on semantics: A company is registered to a standard not certified. Erik Madsen indicated the course will now be at site and he will provide dates/times later in the meeting. The change in location means no cost to EMAB – except honorarium and travel to Yk.

RWED Alternate adds that a company puts a procedure in place and the ISO is to verify if the procedure is being done. This is not about if the procedure is done well or badly.

Motion to accept minutes deferred pending final minutes being distributed.

Item 2 – Review of EA

Executive Director proposes a list of the sections of the Environmental Agreement that could be the focus: Recitals, Articles 1, 4, 5, 6, 7, 14. This was accepted.

RWED Alternate questions the use of "Responsible Authority" in any final plain language version of the EA.

ED proposes a list of objectives of the EA workshop, as discussed at a previous board meeting:

- Clarify/agree (review) meaning of each section and EMAB's role. If necessary identify different interpretations.
- Ensure plain language version reflects meaning(s).
- Identify priority sections/clauses in EA.
- Identify activities EMAB needs to change or enhance.
- If some areas need a major discussion, decide how to deal with them.
- What type of plain language document should be developed for the public

List accepted with some small adjustments.

It was suggested that EMAB provide a plain language summary to the public rather than a full plain-language translation as the Board received for the workshop. It should be kept to a maximum of 8 pages, as that that would be most valuable to take into the communities.

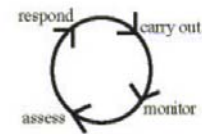
ACTION: Communications Coordinator will write a plain language summary of the Environmental Agreement no more than 8 pages.

Discussion on **adaptive environmental management**: What is it? What is the end value to be attained? Have to understand what it means to relay it to community.

Who does the assessing in Adaptive Environmental Management is important.

Adaptive Environmental Management is a process.

Adaptive Environmental Management



(NOTE: all changes to the plain language version used in the board meeting will be reflected in an updated version at a later date.)

Discussion on the **Comprehensive Study Report under 1.1a**:

- what's in place to make sure that Diavik is carrying out its Commitments?
- that's EMAB's role
- Eric Yaxley of DIAND has provided a list of commitments.

ACTION: Make copies of Commitments list and distribute to the Board. Make a presentation to the Board.

It is noted that it is a good strategic move for EMAB to be going through EA now and knowing what is and isn't being done.

Discussion on **sustainable development**:

- is it to give back to environment when you take away from environment? ie. beyond usefulness to humans
- when the agreement was written no one said the Brundtland definition of sustainable development (used at the workshop today) was the definition to use with the EA
- Board will return to sustainable development in the future to come to a sense of what it means together

Discussion on **Guiding Principle c)**:

- What does economically feasible mean? Technology that works in the area as opposed to the best, which might not work in this climate? Not necessarily.
- "feasible" leads to "appropriate"

Discussion on **Precautionary Principle**. Example used: caribou. All the science is not in – but we should move now to diminish effects on them.

Broke for lunch at 12:00

Resumed at 1:30

Point made that the Board needs to move more quickly through the EA because of time constraints.

Return to **Precautionary Principle** – will get back to it at a later date. Work on it more for another draft of plain language version of EA.

ACTION: above paragraph

Discussion on the formation of MVLWB and how it is affected/bound by the EA since it came into being after the EA was signed. Floyd explains the process. Refers back to 3.7 regarding successor legislation.

Florence makes the point that the relationship between EMAB and MVLWB is unclear.

ACTION: Request from Minister of DIAND – does MVLWB fall into the category of “Canada” as in 4.3 or does it fall under the category of 4.4 and “regulatory authority?”

ACTION: Copy all letters to DIAND that are sent to MVLWB. (Every time EMAB asks them to do something the Minister will know about it.)

It is noted that there are training initiatives from DIAND available to Aboriginal people.

How have clauses 4.2 g) and 4.2h) been implemented to date and are any changes needed?

FLAG *in terms of what we have done and what we should be doing for:*

g) make recommendations respecting the participation of each of the Aboriginal Peoples and Affected Communities in training initiatives and monitoring programs bearing on Environmental Quality;

h) make recommendations concerning the need for and design of traditional knowledge and other studies, and, where appropriate, facilitate the management and implementations of these studies;

It was noted that the Federal government has put money into ecosystem- based Northern environmental studies.

Florence talks about the CARC meeting she went to, where talks of studies and training took place. This should be added under Other Business.

FLAG: *4.2k) Public registry and office space – should we move to a digital library?*

FLAG: *how does EMAB act on this clause? (It is tied to communication plan and capacity building.)*

m) provide a meaningful role for each of the Aboriginal Peoples in the review and implementation of environmental monitoring plans in respect to the Project.

FLAG: *4.6 k) for cost efficiency by sharing staff, board room, Xerox, computers etc.*

k) The Advisory Board may coordinate its activities with the activities of the board established pursuant to the Socio-economic Monitoring Agreement.

Further discussion on 4.6 k):

- the government doesn't realize the full load of just dealing with the environmental side of the Project or just the socio-economic side of the Project.
- there are still some efficiencies and effectiveness that could be looked at, like community visits together
- has the socio-economic board even made recommendations yet?

There is a need for multi-project environmental and socio-economic boards/agencies.

Break at 3:00

Resumed at 3:15

ISO dates are:

basic ISO introduction – April 14-15 at Diavik

basic ISO introduction – April 28-29 at Diavik

auditor course – May 11-13 at Diavik

Clause 4.11 – was this done?

Flag: studies

(Plain language version.)

6.1

One goal is to include Traditional Knowledge of Aboriginal people in the Environmental Plans and Programs in the best way possible. Where it applies, Traditional Knowledge will be considered fully side by side with scientific knowledge in developing, reviewing and changing the Environmental Management Plans.

If a Party can show that a Traditional Knowledge study is: necessary; important to the Environmental Management Plan; not a repeat of another study that's been done; and has reasonable costs, then Diavik will commit itself to do the study or fund it.

A process is needed for determining EMAB's role in this, possibly including tracking any proposals and/or building capacity to develop proposals or assisting with development of proposals.

Flag 6.2 *the list of Environmental Plans. Have the various plans been checked to determine whether they address the appropriate elements of the CSR and the requirements in 6.2 a, b, c and d?*

ACTION: EMAB to review each plan to assess whether it includes the components in CSR and 6.2. Is this an action?

ACTION: EMAB should have a better sense of who is looking at what document/report, what their comments are and is EMAB being Cced on these.

EMAB Board Meeting Minutes
March 26, 2004
EMAB Board Room Yellowknife, NT

Present:

Bob Turner, Chair, North Slave Metis Alliance
Floyd Adlem, Vice-Chair, Government of Canada
Johnny Weyallon, Dogrib Treaty 11 Council
Florence Catholique, Lutsel K'e Dene First Nation
Lawrence Goulet, Yellowknives Dene First Nation
Erik Madsen, Diavik Diamond Mines Incorporated
John Morrison, Government of Nunavut
John McCullum, Executive Director
Angus Martin, Alternate, Yellowknives Dene First Nation

Absent:

Doug Doan, Secretary-Treasurer, Government of the NWT
Doug Crossley, Kitikmeot Inuit Association

Minute taker:

Michele LeTourneau, Communications Coordinator

Meeting started: 9:20

ITEM 2 – EA Review

Resumed EA review.

Action: Ask Diavik in a letter what has been done so far about Article 7.6.

7.6 (plain language version)

Aboriginal Community Involvement

Diavik will do its best to:

- involve each of the Aboriginal Peoples in designing and carrying out Environmental Monitoring Programs;
- make sure members of each of the Aboriginal Peoples have top priority in training and employment in relation to environmental monitoring. (This is also part of the Socio-economic Monitoring Agreement.); and
- give technical training opportunities for the youth of the Aboriginal Peoples.

Aboriginal Peoples also participate in the review of Environmental Management Plans and Environmental Monitoring Programs by participation on **EMAB** and its activities.

Discussion on reports and management plans and programs:

- which reports need to be reviewed by EMAB. So far the focus has been on AEMP/WEMP.
- Florence notes that Diavik hasn't been in the community in a while. Environmental Plans and Programs should be brought to community level.

Action: Discuss at a later date if EMAB wants to go back and review plans and programs again. As part of the discussion, include whether they should be looked at again at the community level, as suggested by Florence.

As a result of reading through Article 8, (*DDMI shall comply with all requirements of the CSR relating to monitoring and mitigation of potential socio-economic effects resulting from environmental changes.*), the subject of cooperation for both boards to link on some issues returns. For example, is caribou harvesting handled there or here?

Action: Executive Director to look at socio-economic agreement for any/all references to caribou.

It is noted that the CSR came first, and also contains info on caribou.

Flag 12.1 (on Annual Reports) c) (xiii) for discussion – "in appropriate media in aboriginal language" – what does this mean and is it being done adequately?

Action: Request to be on CC list for letter of approval for Diavik's Annual Report from DIAND Minister.

Erik asked (re: 14.1 d) how does someone in Wekweti access a document? How about Dettah? etc.

Lawrence: for Yellowknives Dene, documents can be had from the Land and Environment Committee

Florence: in Lutsel K'e they can be accessed from Florence's office.

Also, how do these Parties provide access to their documents?

ACTION: Get update from DIAND to check that security deposits on EA and Regulatory Instruments are where they should be.

Article 16 is the teeth of the agreement.

(SUMMARY

Article 16 outlines the steps to be taken if Parties disagree on an issue related to this Agreement:

- *the other Party must be notified in writing*
- *arbitrators can be chosen, if necessary*
- *EMAB can get involved in a disagreement that comes from this Agreement*
- *when and how to get the courts involved)*

Parties pay their own costs for dispute resolution – this avoids frivolous disputes.

ACTION: Request DIAND provide current information on arbitration legislation and differences between NWT and federal acts.

Action: Check past minutes to see whether the April 2002 meeting of the Parties met the requirements of clause 4.11.

4.11 (in plain language)

The Parties will review Article 4 by March 28, 2002. They will do this using results from:

- the regional cumulative effects assessment and management framework initiative referred to in Article 10; and
- the experience of other advisory environmental boards, including the BHP Independent Environmental Monitoring Agency.

The Parties can negotiate to change some of the items in Article 4. BUT Diavik does not have to provide any extra money because of these negotiations.

Florence suggests that Communications Coordinator bring in translators when working on plain language EA summary so that the right English words can be used. Florence adds that this should be done in person because the translator needs to know the right meaning of the EA. Go directly into communities.

A draft plain language translation of the constitution and by-laws was sent out as an information item. It will not be reviewed.

Note: three items were flagged to be discussed at a future date once the Communications Coordinator compiles info for discussion: "adaptive environmental management," "sustainable development" and "precautionary principle."

Break at 10:35

Back at 11:05

Quorum verified.

Chair suggests meeting ends at 1 p.m. Everyone agreed.

Item 1 – Return to Approval of Minutes

Motion # 02-04-26-03

Accept minutes of February 11-12, 2004 Board meeting.

Moved: Floyd Adlem

Seconded: Florence Catholique

Noted that Floyd likes the minutes' action boxes.

Carried: Unanimously

Motion # 03-04-26-04

To provide the executive director a 5% bonus based on his performance evaluation.

Moved: Florence Catholique

Seconded: Johnny Weyallon

Carried: Unanimously

Item 3 – Review of Strategic Planning Committee draft Terms of Reference

How to meet? Teleconference one method.

When will this commence? The Board schedule from the previous meeting is laid out in the Board's calendar.

The Executive Director walks everyone through ToR.

Florence suggested that the planning committee should have an Aboriginal member since there are none as it stands.

It is noted that according to the minutes of last month's Board meeting Doug Crossley is the "additional member" mentioned in the ToR – and so a motion is unnecessary to name him.

Amendment to the ToR – the Executive Director should not be a member – it should read "an additional member with support from the Executive Director"

Motion # 04-04-26-04

*To accept the Strategic Planning Committee Terms of Reference as amended.
Moved: Florence Catholique
Seconded: Lawrence Goulet
Carried: Unanimously*

Item 4 – Review Scientific Review Panel draft Terms of Reference

The Executive Director walks everyone through revised ToR.

Question – What does EMAB need? A number of points were made:

- Not sure if we ever need more than one reviewer. Try to imagine situations where this is needed.
- Difficult to establish ToR for a panel if we don't need it.
- Do a ToR – if we need it, it's there. For example closure might call for more than one person. Other situations where EMAB deals with a whole bunch of issues. Such as fish habitat restoration, which involves animals, sloping roads, drainage. A multi-issue situation would require more than one expert.
- We need the "memory" from situation to situation
- On the issue of memory vs. using different people – could try to use the same expert from a certain field eg. Water
- Board can provide memory
- Part of the role for the expert would be to review the comments of other scientific experts from Regulatory Authorities and industry
- also see the value of using the expert at a community level
- develop a good, long term relationship with people we use
- concern that multiple reviewers can water down, or "temper" the recommendations; don't want to go with a tempered down version of a report
- standing offer takes care of our needs for individual reviewers.

Discussion.

ToR should be set aside because it needs work. Executive Director indicates that he needs direction from the Board on this.

ACTION: Board members will give Executive Director comments/direction on current draft of ToR for Scientific Review Panel.

Matter deferred.

Item 5 – Final Report TK Panel on No Net Loss

Florence wasn't yet able to consult with her community people on No Net Loss report so she asks that it be deferred.

Erik asks where is the process at. Are Diavik and DFO waiting on EMAB?

DFO has hired a consultant to gather information on specific projects that could improve fish habitat to offset lost habitat at Diavik or elsewhere.

Issue raised: need permission of participants to release TK Panel report on NNL.

Generally EMAB should try to get permission to make TK public before even forming the panel.

Action: Circulate excerpt of that EA section, 4.9 e), on making TK public, to the parties from the Chair.

Item 6 – Update on TK Panel on fencing

Report handed out.

Question: Did Diavik do anything in response to TK Panel's recommendation about the barbed wire on the fence around the waste transfer area? (That's the barbs with fox fur hair.)

Answer: Nothing has been done yet

Despite the informal email, Diavik is waiting for an official communication from EMAB.

Action: Letter to Diavik re: TK recommendation on barbed wire on the gully fence around the Waste Management area.

Erik notes that the barbed wire was put up to prevent wolverines from going over the top based on elders' recommendations. He expressed concern that this was a knee-jerk reaction and should be better thought out.

It was pointed out that part of the problem is improper fencing technique. The fence follows the contours of the land and there is a gully at this point that fills with snow so that the barbed wire is at the level of the top of the snow. The fence should go straight across with additional flaps below to reach the ground, as recommended in the Panel's report.

Question: Does EMAB respect all the wishes of all the elders?

Discussion on respecting elders' wishes.

It is suggested that the whole report of the elders be dealt with as a piece.

Motion # 05-04-26-04

To cut the barbed wire around the gully fence at waste management area where foxes are catching their fur.

Moved: Johnny Weyallon

Seconded: John Morrison

Motion carried with Erik abstaining

Discussion on the barbed wire issue.

It was noted that the Panel's report doesn't include this recommendation of the elders regarding the need to immediately cut the barbed wire at the location discussed. This should be added back in to the report.

It was agreed that the Panel members must sign off on the report before it can be made public. Noted that Lutsel K'e has a protocol that requires signature.

Action: Provide copy of TK Panel report to elders and have them sign it off.

Item 7 – Reports: Executive Reports

a) 2004-2005 Budget Review and Approval

Only one suggestion by Board members was to increase the Executive Committee budget. This was done so the budget stands as for 2003-04. Also added a budget for the Strategic Planning Committee based on four meetings.

EA allows for an increase in budget for inflation using the NWT CPI Index so added 23,000 to revenue for 2005-06.

Motion # 06-04-26-04

Motion to accept the budget for 2004-2005 as amended.

Moved: Florence Catholique

Seconded: Lawrence Goulet

Carried: Unanimously

Review ToR for Executive Committee

One comment: why give two days notice to members? It should read "members of the committee."

Motion # 07-04-26-04

To accept the ToR for Executive Committee as revised

Moved: Erik Madsen

Seconded: Johnny Weyallon

Carried: Unanimously

Review draft Code of Conduct

Executive Director walks Board through Code of Conduct.

New code change since last version: Clause 6 "will not publicly criticize position and policies of the board." Rather than "will publicly support positions..." This is less restrictive.

Motion # 08-04-26-04

To accept the Code of Conduct as presented.

Moved: Florence Catholique

Seconded: Floyd Adlem

Question: the bankruptcy issue in the Code, does the same thing apply if one is unemployed?

Answer: no.

It was pointed out that it is difficult to get insurance if a Board member has declared bankruptcy.

Carried: Unanimously

Review of Outstanding Action Items

ACTION: Invite drafters of the Environmental Agreement to a Board meeting and arrange for them to discuss the original intent of the harvesting clause.

ACTION: Written update for the board on intervener funding issue.

Executive Director reported on lunch meeting with Carrabba asking him to support EMAB request to ask DIAND for intervener money under the MVRMA.

Erik says a letter of support is being drafted.

Point made to Carrabba on the issue of consultation with communities: that consultations with EMAB are not the same as, or a substitute for, consulting with communities.

ACTION: Provide Florence with a reference on the applicability of the new CEAA funding under the MVRMA

Erik reminds everyone about the April 15 deadline for applications for TK Camp projects at the mine site.

Tracking Chart – FYI only

Correspondence

Letter from fisheries needs some discussion. Executive will prepare a response.

Overdue responses from DIAND on Coppermine River Monitoring recommendation and from all who received recommendations from the Water Quality Monitoring workshop. Also no response from DFO on request for update on reports that are still in review.

ACTION: Follow up overdue responses. Respond to DFO letter.

Board members reports

Lawrence: YK Dene monitoring station on winter road – just have to get reports back in from RWED. That won't be until road officially closes. Felix is out there. It's going good. Angus adds that the winter road is improving all the time.

John Morrison on behalf of KIA: Request one time only delay for capacity funding deadline. The mayor and SAO resigned. Peter Taptuna, who was to handle the application is now mayor. Can he have a month or two? Equipment is about to be ordered.

EMAB says get a letter from KIA saying that money is spent. KIA is the organization that receives the capacity funds and reports on them to EMAB.

J. Morrison on behalf of the GN: GN is reorganized. Department of Sustainable Development has been split into Dept. of the Environment and Department of Economic Development & Transportation.

Erik:

- Another Diavik reminder for deadline of proposals for TK Camp.
- ISO: get name for EMAB representative ASAP. Only cost to EMAB is honorarium and getting person to YK.
- Will have draft of annual report for next meeting for review.

ITEM 8 – Other Business:

IEMA offer of Carole Mills attending a board meeting is appreciated in principle but EMAB doesn't have time to squeeze anything more into its agenda. EMAB has requested more details on IEMA's proposed agenda for a joint meeting.

Action: Move Floyd and his CPR presentation to summer.

Action: Request Chris Hanks provide an update on the 2003-04 winter road season, including spills etc.

Ammonia update

Diavik asked for mediation in order to solve issues in advance of hearing. MVLWB hasn't done mediation before. Had to consult on how to do it. Mediation scheduled for April 1. Laura Johnston is mediator. Hearing, if required following mediation, tentatively scheduled for April 6.

Next EMAB meeting is scheduled for April 13-14 (WEMP AND AEMP FOCUS).

Will discuss a site visit to Diavik at next meeting – could combine this with June meeting in Lutsel K'e.

Plain language summary of EA is not to be made a priority by Communications Coordinator. Get on with other stuff.

Motion # 09-04-26-04

To adjourn meeting.

Moved: Floyd Adlem

Seconded: Erik Madsen

Carried: Unanimously

Closing prayer: Lawrence Goulet