



February 20, 2009

By E-mail only to: [vchristensen@mveirb.nt.ca](mailto:vchristensen@mveirb.nt.ca)

Mr. Vern Christensen  
Executive Director  
Mackenzie Valley Environmental Impact Review Board  
Box 938, 200 Scotia Centre  
5102 – 50th Avenue  
Yellowknife, NT X1A 2N7

Dear Mr. Christensen:

**Re: Draft Terms of Reference dated January 30, 2009 – Environmental Assessment of Yellowknife Gold Project of Tyhee NWT Corp – Your File: EA0908-003**

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Tyhee NWT Corp (“**Tyhee**”) acknowledges receipt of a copy of the letter of the Mackenzie Valley Environmental Impact Review Board (the “**Review Board**”) dated January 30, 2009, together with a copy of the draft Terms of Reference and Work Plan for the environmental assessment of Tyhee’s Yellowknife Gold Project (the “**YGP**”). We have also taken note of the reminder that was posted on the Review Board’s website on February 16, 2009.

In response, we enclose a detailed summary of Tyhee’s responses to the draft Terms of Reference together with two tables. The first lists the provisions of the draft Terms of Reference that Tyhee asks be deleted, and the second table cites the provisions that Tyhee requests be amended. As shown in the tables, we request that not less than 42 provisions of the draft Terms of Reference be deleted, and that a further 48 provisions be amended. Please note that the detailed responses also address a number of other provisions that Tyhee believes require clarification or reconsideration that are not listed in either of the tables.

Given the extensive nature of our responses and the fact that they touch on virtually all aspects of the draft Terms of Reference, I would like to highlight a number of significant issues and recurring themes to help put Tyhee’s views into context, and to emphasize a number of our principal concerns.

## **1. Scope and Nature of the Assessment**

When compared with the other mining projects that have been undertaken in the NWT over the past decade, the YGP is a relatively modest undertaking in terms of its magnitude, duration, number of employees and overall environmental and socio-economic impact. However, we find that a number of the provisions of the draft Terms of Reference, particularly those that pertain to the proposed socio-economic assessment, do not seem commensurate with the scope and potential impact of the development. We therefore recommend that the Terms of Reference document be reviewed in its entirety to ensure that all of the requirements for the environmental assessment, especially those that pertain to the assessment of social and cultural impacts, are proportionate to the overall scope of the proposed development, and in keeping with the likely magnitude of any environmental, social and cultural impacts that could reasonably be expected to result.

## 2. **Project Description Report**

As indicated on the Review Board's website, Tyhee filed the Project Description Report (the "PDR") for the YGP in the third quarter of 2008. While this report sets out the principal facilities, processes and practices that Tyhee intends to implement in the development, operation and reclamation of the YGP, it also contains an extensive body of data and information that is relevant to virtually all of the issues that Tyhee anticipates require consideration during the environmental assessment

Although the draft Terms of Reference contain occasional references to the PDR, the overall document appears to have been developed without due consideration of the extensive information that we have already submitted. Consequently, the enclosed responses include numerous requests from Tyhee for the Review Board to ensure that the Terms of Reference clearly delineate the additional information that is required for the environmental assessment from that which Tyhee has already provided or is otherwise publicly available.

## 3. **Designation of Winter Lake as a Tailings Impoundment Area**

The Review Board's covering letter of January 30, 2009 states that the "...process for reclassifying any lake as a Tailings Impoundment Area via Schedule 2 of the Metal Mining Effluent Regulations in the Fisheries Act will be **in parallel** with the environmental assessment of the Yellowknife Gold Project" (emphasis added).

As outlined in the attached responses, Tyhee does not fully understand the Review Board's intentions and therefore sees a critical need to better define the relationship between the environmental assessment and the process to designate Winter Lake for tailings deposition pursuant to the Metal Mining Effluent Regulations. While we understand that permission to use a natural waterbody for waste disposal purposes requires a comprehensive review of all of the potential implications, we note that the information that Tyhee has already provided in relation to Winter Lake strongly indicates an extremely limited fisheries resource potential. We therefore hope that the process to review Tyhee's application, including the extent of the consultation to be required, will take into account the character and extent of the aquatic habitat that will be impacted if Tyhee's application is approved.

## 4. **Limiting the Project "Footprint" to Previously Impacted Areas**

As indicated in the PDR and the enclosed responses, Tyhee believes that the interests of the environment are best served by confining the Yellowknife Gold Project, to the extent possible, to areas that have previously been impacted by other mining-related activities, notably the Discovery Mine airstrip and the long-established winter road route. As a result, we are surprised to see that the draft Terms of Reference direct us to consider alternatives that would bypass these existing facilities and therefore enlarge the overall "footprint" of the project. While we remain prepared to consider any appropriate alternatives, we believe that maximizing the use of previously impacted areas is consistent with sound environmental management and land use practice.

## **5. Environmental Assessment and Regulatory Approval**

Tyhee acknowledges that Part 5 of the MVRMA requires the Review Board to ensure that the environmental assessment is sufficiently comprehensive, detailed and complete to enable the board to formulate a determination or recommendation pursuant to section 128. We further acknowledge that one of the potential outcomes of an environmental assessment is a recommendation by the Review Board to the Minister and the “responsible ministers” to approve a project that, in the Review Board’s opinion, is likely to have a significant adverse impact on the environment, provided that the approval is made subject to the measures that the Review Board considers necessary to prevent the significant adverse impact.

As outlined in the enclosed responses, it appears to Tyhee that certain provisions of the draft Terms of Reference would require Tyhee to undertake studies, make submissions or otherwise respond to issues that are properly considered during the regulatory phase that would follow the ministers’ acceptance of the Review Board’s recommendations. We urge the Review Board to ensure that the Terms of Reference maintain an appropriate distinction between the environmental assessment phase and the regulatory phase in a manner that is consistent with the overall regulatory scheme established under the MVRMA and other relevant laws of general application, notably the *Northwest Territories Waters Act*.

## **6. Interpretation or Paraphrasing of Legislation**

In Tyhee’s responses, we have noted certain instances where it appears that the draft Terms of Reference paraphrase or interpret certain provisions of the MVRMA. Where it is necessary or desirable for the Terms of Reference to incorporate or refer to specific sections of the Act, we recommend that the words that are used in the legislation be quoted exactly as they appear in the statute to avoid any misunderstanding or error.

## **7. Structure of the Terms of Reference**

Tyhee finds that incorporating a “Preamble” at the beginning of each major section of the document is confusing and believes that this approach may lead to ambiguity, duplication of requirements or misunderstanding. We believe that the interests of the process are best served by ensuring that the Terms of Reference consist of a clear, orderly and explicit set of instructions for the developer to follow in preparing the Developer’s Assessment Report, without any accompanying narration or a review of past events. If the Review Board believes that it is desirable to provide explanatory or background information to supplement the Terms of Reference, we recommend that this information be set out in a covering letter that would not constitute part of the formal Terms of Reference themselves. We therefore propose that the Terms of Reference be revised to reflect this approach.

## **8. Ambiguous or Subjective Terms**

Tyhee notes words such as “thorough”, “robust”, “rigorous” and “explicitly” are used in the draft Terms of Reference to describe a number of the initiatives that the company is expected to undertake. In our view, these terms are subjective, and may be open to conflicting interpretations. Tyhee submits that the final version of the Terms of Reference should be expressed in clear, concise and objective language that is not subject to interpretation or presents the risk of misunderstanding. We therefore recommend that terms of this kind be avoided in the Terms of Reference document.

Tyhee expresses a similar concern in relation to the use of the words `...will include, but not be limited to...`, and recommends that the final Terms of Reference clearly itemize the studies, data and information that are to be addressed in the Developer's Assessment Report.

To be clear, Tyhee remains committed to developing the Yellowknife Gold Project in an environmentally, socially and culturally appropriate manner having due regard to the interests of all stakeholders including the company's shareholders, its employees, the residents of the seven communities identified in the geographic scope of the project and the interests of NWT residents generally. In order to do so, however, it is essential that each step required to fulfill these objectives be taken in an organized, disciplined and prudent manner.

We offer our comments, recommendations and requests in this spirit, and believe that they will contribute to furthering the environmental assessment process and thereby help to achieve the overall goals of the project.

We look forward to receiving your response.

Yours truly,

**TYHEE NWT CORP**

*Original signed by "H.R. Wilson"*

Hugh R. Wilson  
Vice President, Environment and Community Affairs

Attachments:

- 1: Table 1
- 2: Table 2
- 3: Detailed Responses to the Draft Terms of Reference

Copies: Mr. Paul Mercredi – Environmental Assessment Assistant (MVEIRB) – by e-mail only  
Mr. Martin Haefele – Manager- Environmental Assessment (MVEIRB) – by e-mail only

Table 1 to the Letter of Tyhee NWT Corp to the Mackenzie Valley  
Environmental Impact Review Board dated February 20, 2009

**LIST OF PROVISIONS IN THE DRAFT TERMS OF REFERENCE FOR THE YELLOWKNIFE GOLD  
PROJECT DATED JANUARY 30, 2009 THAT TYHEE REQUESTS BE DELETED**

<b>Item Number</b>	<b>Terms of Reference Section Number</b>	<b>Content</b>
1	Section 5.6	Parameters for follow-up programs
2	Section 6.A, Item 3	Description of sources and extent of pre-existing contamination
3	Section 6.A, Item 6	Surface and sub-surface geology
4	Section 6.A, Item 15	Socio-economic conditions and indicators in communities
5	Section 6.B, Item 1a	Deposition of toxic compounds
6	Section 6.B, Item 1c	Geological and geothermal analyses
7	Section 6.B, Item 8	Water use studies
8	Section 6.C, Item 1	Use of sodium cyanide
9	Section 6.C, Item 3	Study of alternative airstrip locations
10	Section 6.C, Item 4	Study of alternative winter road routes
11	Section 6.C, Item 5	Prolonging mine life
12	Section 6.C, Item 6	Alternatives for tailings disposal
13	Section 6.E, Item 7a	Aquatic effects monitoring program
14	Section 6.E, Item 7b	Adaptive management strategy
15	Section 6.E, Item 7c	Incorporation of traditional knowledge
16	Section 6.E, Item 9	Metal leaching and acid rock drainage
17	Section 6.E, Item 10	Acid generation and metal leaching in tailings
18	Section 6.E, Item 11	Remote water quality monitoring stations
19	Section 6.E, Item 13b	Quality and quantity of minewater discharge
20	Section 6.E, Item 13c	Effects of mine dewatering on groundwater
21	Section 6.E, Item 14	Erosion and sedimentation
22	Section 6.E, Item 15	Study of dewatering effluent

Table 1 (continued)

<b>Item Number</b>	<b>Terms of Reference Section Number</b>	<b>Content</b>
23	Section 6.F, Item 11	Nicholas Lake water use
24	Section 6.H, Item 1	Vegetation studies
25	Section 6.H, Item 3	Vegetation removal study
26	Section 6.I, Item 1	Impact of project components
27	Section 6.I, Item 2	Adaptive management plans
28	Section 6.I, Item 3	Effects on permafrost
29	Section J	Air quality and climate
30	Section 6.K-2, Item 1	Economic impacts
31	Section 6.K-2, Item 2	Individual community benefits
32	Section 6.K-2, Item 3	Adverse pressure effects
33	Section 6.K-2, Item 4	Vulnerable sub-population study
34	Section 6.K-2, Item 6	Mitigation measures
35	Section 6. K-3, Items 1, 2 and 4	Social impact studies
36	Section 6.K-3, Item 5	Development interaction studies
37	Section 6.K-3, Item 6	Valued social component studies
38	Section 6.K-3, Item 8	Distribution of impacts
39	Section 6.K-4.2, Item 1	Unauthorized occupancy of Crown land and regulation of hunting
40	Section 6.N, Item 2f	Tailings Containment Area liabilities
41	Section 6.N, Item 4	Provision of financial security
42	Section 7, Item 7g	Past environmental performance

Table 2 to the Letter of Tyhee NWT Corp to the Mackenzie Valley  
Environmental Impact Review Board dated February 20, 2009

**LIST OF PROVISIONS IN THE DRAFT TERMS OF REFERENCE FOR THE YELLOWKNIFE GOLD  
PROJECT DATED JANUARY 30, 2009 THAT TYHEE REQUESTS BE AMENDED**

<b>Item Number</b>	<b>Terms of Reference Section Number</b>	<b>Content</b>
1	Section 4.1	Deletion of requirement to assess “all feasible configurations for development”
2	Table 1 Caption	Adjustment of “assessable project components” to reflect decreases as well as increases
3	Table 1	Incorporate reference to open pit mining
4	Table 1	Reference to use of historic Discovery Mine airstrip
5	Map 1, Appendix I	Boundaries of “Local Study Area”
6	Section 4.2	Geographic scope of assessment of effects on the “human environment”
7	Section 4.2	Temporal scope of the environmental assessment
8	Section 5.3	Approval of the project “past environmental assessment”
9	Section 5.7	Application of traditional knowledge and scientific information
10	Section 5.8	Assessment of cumulative effects
11	Section 6.A	Surface water and groundwater studies
12	Section 6.A, Item 5	Water balance study
13	Section 6.A, Item 7 and Item 8	Studies of terrestrial and aquatic biota and their respective habitats
14	Section 6.A, Item 9	Studies of local air quality
15	Section 6.A, Item 11	Properties of soils and sediments in lakes
16	Section 6.A, Item 12	Rare plants
17	Section 6.A, Item 13	Labour pool studies

Table 2 (continued)

<b>Item Number</b>	<b>Terms of Reference Section Number</b>	<b>Content</b>
18	Section 6.A, Item 14	Existing physical infrastructure
19	Section 6.A, Item 15	Historical and existing land uses
20	Section 6.B, Item 2	Engineering designs and specifications –tailings impoundment area
21	Section 6.B, Item 3	Use of historic Discovery Mine airstrip
22	Section 6.B, Item 4	Infrastructure and mine development plans – Nicholas and Ormsby deposits
23	Section 6.B, Item 5	Properties of rock and aggregate materials for construction
24	Section 6.B, Item 9	Schedule for dewatering
25	Section 6.B, Item 10	Chemical and reagent use
26	Section 6.B, Item 11	Roads and stream crossings
27	Section 6.B, Item 12	Use of water from Giauque Lake
28	Section 6.B, Item 13	Process plant
29	Section 6.B, Item 14	Accessory installations
30	Section 6.B, Item 15	Use of explosives
31	Section 6.B, Item 17	Capital costs
32	Section 6.B, Item 18	Operating costs
33	Section 6.B, Item 19,	Project lifespan
34	Section 6.B, Item 20	Workforce requirements
35	Section 6.B, Item 21	Transportation arrangements and housing plans
36	Section 6.C, Item 8	Transport of ore from Nicholas Lake
37	Section 6.C, Item 1	Information pertaining to tailings
38	Section 6.E, Item 8	Hydrological information
39	Section 6.E, Item 12	Groundwater studies



Table 2 (continued)

<b>Item Number</b>	<b>Terms of Reference Section Number</b>	<b>Content</b>
40	Section 6.E, Item 16	Nicholas Lake drawdown
41	Section 6.E, Item 17	Giauque Lake drawdown
42	Section 6.F, Items 1 through 7, inclusive	Designation of Winter Lake as a Tailings Impoundment Area
43	Section 6.F, Items 8, 9 and 10	Impacts on aquatic biota and habitats
44	Section 6.G, Items 1, 2, 3, 4 and 6	Wildlife studies and monitoring
45	Section K-1	Employment and business opportunities
46	Section 6.L	The term “guidelines”
47	Section 6.L, Item 4f	Vehicular and industrial accidents
47	Section 6.L, Item 8	Medical evacuation procedures



**RESPONSES OF TYHEE NWT CORP TO THE DRAFT  
TERMS OF REFERENCE DATED JANUARY 30, 2009  
ISSUED BY THE MACKENZIE VALLEY ENVIRONMENTAL  
IMPACT REVIEW BOARD FOR THE ENVIRONMENTAL ASSESSMENT OF  
TYHEE NWT CORP'S YELLOWKNIFE GOLD PROJECT  
EA0809-003**

**February 20, 2009**

**Responses of Tyhee NWT Corp to the Draft Terms of Reference  
Dated January 30, 2009 Issued by the Mackenzie Valley Environmental Impact  
Review Board for the Environmental Assessment of Tyhee Gold Corp's  
Yellowknife Gold Project (EA0809-003)**

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#### **Section 4 -- Scoping**

1. Meaning of "Specific Items"

The first sentence of the second paragraph of this section reads as follows:

"The Specific Items sections below contain these issues that Tyhee must address during this environmental assessment."

However, the words "specific items" (whether capitalized or not) appear only once in the remainder of the document. They are found on page 34 where, under the heading "Accidents and Malfunctions", the final sentence in the "Preamble" to that section states: "Tyhee will present such conceptual contingency plans in the DAR, together with responses to the following **specific items**:" (emphasis added).

Tyhee requests that the Review Board clarify the meaning of the capitalized term "Specific Items", and the role that this term is meant to play in the Terms of Reference for the environmental assessment. Tyhee recommends that this explanation should take into account Section 5.2 of the draft Terms of Reference where the document sets out a general framework for ranking the issues to be addressed in the environmental assessment, in decreasing order of importance, as the "Key Lines of Inquiry", "Subjects of Note" and "Other."

#### **Section 4.1 – Scope of Development**

1. Alternative Project Components or Configurations

The second sentence in Section 4.1 states that the Review Board "...considers any alternative project components or configurations that Tyhee has suggested in the Project Description Report, or any alternatives that Tyhee adopts as a result of this environmental assessment process, to also be within the scope of development for this environmental assessment." However, the third sentence goes on to say that:

"...Tyhee must indicate how all feasible configurations for development may impact the environment, and present the impacts of those alternatives as though Tyhee has fully committed to developing those project features."

Tyhee requests that this sentence be deleted. The company understands that it may be required to assess the potential impacts of all of the alternative ways of carrying out the YGP that the company has proposed. However, Tyhee questions whether it is appropriate to require Tyhee to assess "all feasible configurations"

for the proposed development. Moreover, such a requirement does not seem consistent with the definition of the term "development" in section 111(1) of the *Mackenzie Valley Resource Management Act* (the "MVRMA".)

2. Table 1 – Current Project Components

- (a) The text in bold that appears at the top of this table should be amended to provide for any reduction in the "assessable project components" as well any addition thereto, if Tyhee proposes any reduction in the scope of the project during the course of the assessment.
- (b) The first "bullet" under the heading "Mining Process" should be amended to read "Development of **open pit and** underground workings...".
- (c) The last "bullet" under the heading "Support/Ancillary Facilities and Activities" should be amended to read "Modification and operation of **the existing airstrip at the historic Discovery Mine site** or construction and operation of a new airstrip." As discussed in more detail below, Tyhee does not intend to propose construction and operation of a new airstrip.

**Section 4.2 – Scope of Assessment**

1. Geographic Scope

- (a) Tyhee proposed what it believes to be an appropriate "local study area" in Figure 1.5-1 of the Project Description Report (the "PDR") for the Yellowknife Gold Project the "YGP") dated July 2008. Given that the "local study area" depicted on Map 1 of Appendix I of the draft Terms of Reference is considerably larger than the area outlined in PDR, Tyhee requests that the Review Board revise their Map 1 in Appendix 1 of the draft Terms of Reference to conform to Figure 1.5-1 in the PDR, which, in Tyhee's view, better represents the appropriate Local Study Area for the YGP.
- (a) Tyhee submits that the requirements set out in the third paragraph of Section 4.2 under the heading "Geographic Scope" should be expressed in language consistent with the definition of "impact on the environment" in section 111(1) of the MVRMA. The relevant sentences should therefore refer to the potential effects of the YGP on wildlife harvesting by members of the seven communities that are listed, as well as the effects of the project on the social and cultural environment of those communities. In addition, Tyhee understands that the members of the North Slave Métis Alliance may also reside in those communities. If that is the case, the potential impacts of the YGP on the members of the North Slave Métis Alliance will be considered during the community-by-community assessment. As a result, a separate study of the potential impacts of the project on those individuals would not be necessary.

3. Temporal Scope

The ultimate duration of the assessment proposed under the heading “Temporal Scope” in Section 4.2 is not entirely clear. In Tyhee’s view, a more objective approach would be to define the temporal scope of the assessment as the period that ends when the YGP can reasonably be expected to be free of any outstanding obligation or liability under any licence, permit or other authorization that regulates the environmental aspects of the YGP.

**Section 5.1 – Approach**

1. Baseline Data

Tyhee understands that the Developer’s Assessment Report (the “**DAR**”) must be presented as a comprehensive document that responds in a cohesive manner to the requirements the Review Board establishes under the final Terms of Reference. However, while Tyhee will give careful consideration to those requirements, Tyhee notes that the PDR already presents a substantial body of bio-physical baseline data that Tyhee expects will be substantially sufficient for purposes of the environmental assessment. Tyhee also points out that the company is fully aware of the past history of the surrounding area and therefore does not consider Giauque Lake to be a “suitable reference” lake in light of the waste disposal practices that were evidently followed at the historic Discovery Mine.

2. Information Requests

In the third paragraph under Section 5.1, the Review Board encourages Tyhee to “...engage various responsible ministers and agencies to both produce suitable baseline studies and impact mitigation strategies...” in order to reduce the information requests that may follow the release of the DAR.

Tyhee does not fully understand the direction of the Review Board in this regard. As Tyhee understands it, the environmental assessment process under Part 5 of the MVRMA is meant to operate as a transparent a “one window” process that presupposes the full participation of any department or agency of government that may be responsible for regulating an environmental or socio-economic aspect of the development. Consistent with this approach, the PDR, the draft Terms of Reference and the DAR are widely distributed within government and made publicly available as well.

Tyhee is concerned that negotiations or arrangements that the proponent and public bodies conduct outside of the Part 5 process are likely to be criticized by other interested parties. Accordingly, where government departments or agencies have specific comments, recommendations, questions or concerns in relation to the project, including any that pertain to baseline studies or impact mitigation strategies, Tyhee requests that these agencies make their views known by responding to the draft Terms of Reference, and believes that this approach will promote an open, transparent and orderly process. However, as outlined in

Tyhee's responses to Section 6.B of the draft Terms of Reference below, the application to designate Winter Lake as a tailings impoundment area is an exception, given that Tyhee intends to communicate directly with the Department of Fisheries and Oceans and Environment Canada.

### **Section 5.3 – Valued Components**

#### 1. Mitigation Strategies

Tyhee is mindful of section 128 of the MVRMA, particularly sub-paragraph 128(1)(b)(ii), which provides that where, in the opinion of the Review Board, the development is likely to have a significant adverse impact on the environment, the Review Board shall “recommend that the approval of the proposal be made subject to the imposition of such measures as [the Review Board] considers necessary to prevent the significant adverse impact.”

However, the final sentence of the third paragraph in Section 5.3 of the draft Terms of Reference implies that the Review Board is involved in the approval of the project “...past [taken to mean “following” or “after”] environmental assessment.” Tyhee recommends that this sentence be clarified in order to better reflect the role of the Review Board as defined under section 128 of the MVRMA and to more clearly delineate the transition from the environmental assessment phase of project approval to the regulatory phase.

### **Section 5.4 – Impact Predictions**

#### 1. Methods, Standards and Best Practices

The first sentence in Section 5.4 states that the “methods used for describing environmental conditions” and the methods “for identifying and measuring impacts on the environment” must be consistent with “high standards and best practices”. However, the document offers no guidance as to the particular standards and practices that the Review Board has in mind. Tyhee therefore requests that the Review Board identify the methods, standards and practices that apply.

In the final sentence of the first paragraph under heading 5.4, the draft Terms of Reference state that “[t]he Developer must also explain any methods for predicting how environmental change could affect the development”. Tyhee requests that the Review Board clarify the intent of this requirement, and identify the phenomena that the board considers to constitute “environmental change”.

In addition, the final sentence of this paragraph appears to deal with the same issue as the second sentence under the heading “Other” on page 9 of the draft Terms of Reference, namely the effects of environmental conditions on the YGP. If this requirement will form part of the Terms of Reference, Tyhee requests that it be spelled out clearly in a single section of the document.

## **Section 5.5 – Significance Determination**

### 1. Public Concern

Section 128(1)(a) of the MVRMA instructs the Review Board to determine whether a development is "...likely in its opinion to have any significant adverse impact on the environment or be a cause of **significant** public concern" (emphasis added). Tyhee submits that the first sentence under the heading "Direction" should be revised to include the word "significant."

In addition, Tyhee does not understand what is meant by the third sentence under the heading "Direction" where the draft Terms of Reference state that the "... Review Board or parties to the environmental assessment may use or evaluate the overall impact of the development." This sentence should be deleted or clarified .

### 2. Ecological Context

The underlying intent of the sentence that appears under this heading is not readily apparent. Tyhee requests that this provision be clarified or deleted from the Terms of Reference.

## **Section 5.6 – Uncertainty Analysis**

### 1. Parameters for Follow-up Programs

Tyhee asks whether it is premature to attempt to identify, as proposed in the final sentence of Section 5.6, the "...parameters that should receive particular attention when developing follow-up programs" as part of the DAR. Tyhee submits that these parameters can best be determined once the Review Board has identified the measures that are necessary in order to prevent any "significant adverse impact" pursuant to sub-paragraph 128(1)(b)(ii) of the MVMRA. Tyhee further notes that "follow-up" programs are typically addressed at the regulatory phase of project approval. Tyhee therefore recommends that the final sentence of Section 5.6 be deleted from the Terms of Reference.

## **Section 5.7 – Incorporation of Traditional Knowledge**

### 1. Traditional Knowledge and Scientific Knowledge

As noted in the 2005 Review Board guideline entitled "Incorporating Traditional Knowledge in Environmental Impact Assessment", section 115.1 of the MVRMA directs the board, in exercising its powers, to "...**consider** any traditional knowledge and scientific information that is made available to it" (emphasis added). The Act does not rank scientific information and traditional knowledge as superior or inferior to either one or the other, nor does it instruct the Review Board to give "equal weight" to each of them. Tyhee therefore submits that the first sentence of the second paragraph in Section 5.7 of the draft Terms of Reference should be deleted and replaced by wording similar to that of the second paragraph of Section 1.1 of the Review Board's guideline where, consistent with

the MVRMA, the board affirms its commitment to “fully consider” any traditional knowledge brought forward in its proceedings.

2 Adequacy of Community Assessment to Date

The final sentence of the second paragraph in Section 5.7 states that during scoping, “...**various parties** indicated that their dissatisfaction with the adequacy of community engagement to date” (emphasis added). Tyhee requests that the Review Board identify the parties who expressed dissatisfaction so that Tyhee can better understand the basis for their concerns and continue its efforts to establish a mutually satisfactory relationship with each of the “various parties”.

**Section 5.8 – Cumulative Effects**

1 Prediction of Cumulative Effects

The first sentence of Section 5.8 states that “...the Review Board expects the Developer to **expand on** how the YGP **will contribute** to cumulative effects in the project area for each valued component” (emphasis added). Tyhee is concerned that this wording implies that the Review Board has already concluded that the YGP will unavoidably result in cumulative effects. Tyhee submits that reaching this conclusion is premature given that the environmental assessment has not yet been completed.

Tyhee also notes that the approach taken in the draft Terms of Reference may not be consistent with Section 117(2)(a) of the MRVMA. That provision states that every “...environmental assessment...shall include a consideration of...any cumulative impact that is **likely** to result from the development in combination with other developments” (emphasis added). The Board’s May 2006 Reference Bulletin entitled “Operational Interpretation of Key Terminology” provides helpful guidance on the proper interpretation of the term “likely”. The bulletin cites a number of court cases that collectively indicate that the word “likely” should be taken to mean “probably” rather than “possibly”.

Tyhee therefore submits that the requirements under Section 5.8 of the draft Terms of Reference document to address cumulative effects should be amended to be consistent with the requirements of the MVRMA and with the approach taken in the Board’s Reference Bulletin.

**Section 6 -- Terms of Reference**

**A. Description of the Existing Environment and Baseline Conditions Assessment**

1. Surface Water and Groundwater Quality

Tyhee is concerned that Items 1, 2 and 4 under Section 6.A do not reflect the substantial body of water quality information that Tyhee has already submitted in the PDR.



The company submits that the surface water quality studies to be conducted for purposes of the environmental assessment should have two objectives:

- (i) first, to determine the existing chemical and physical characteristics of the waters and sediments contained in the lakes, streams and other watercourses that can reasonably be expected to be impacted as a result of the proposed development, whether those watercourses have been affected by previous developments or not; and
- (ii) second, to determine the existing chemical and physical characteristics of the waters and sediments contained in one or more “control” water bodies that are not expected to be affected by the project under assessment but will nonetheless continue to be monitored during the life-span of the project in order to detect the changes in water quality, if any, that arise independent of any impact attributable to the project.

Similarly, Tyhee submits that the groundwater studies to be conducted for purposes of the environmental assessment should be designed to determine the existing chemical and physical characteristics of any groundwater resources that can reasonably be expected to be impacted as a result of the proposed development, whether or not such groundwater has been affected by previous developments.

Tyhee submits that the surface water quality studies it has already conducted substantially satisfy these criteria, and intends to carry out additional groundwater studies the results of which will be included in the DAR.

In addition, Tyhee believes that terms such as “regional”, “pristine” and “full spectrum” are ambiguous and may lead to needless confusion and uncertainty, especially considering the impact of operations at the historic Discovery Mine. Tyhee therefore suggests that the Terms of Reference identify the specific elements, compounds and physical properties that need to be determined in further studies, if any, that are required in order to satisfy the requirements of the environmental assessment.

Accordingly, Tyhee requests that Items 1), 2) and 4) in Section 6.A be revised to take into full account the extensive body of information that Tyhee has already provided in the PDR and to reflect the approach that the company has proposed above. This will enable Tyhee to focus on collecting the additional surface water, groundwater and sediment quality information, if any, that is required for the environmental assessment.

## 2. Sources and Extent of Pre-Existing Contamination

Section 117(1)(a) of the MVRMA states that “...every environmental assessment...of a proposal for a development shall include a consideration of...the impact of the development on the environment.” To the best of Tyhee’s knowledge, the legislation does not require an assessment of previous developments.

In Tyhee's view, the results of the surface and groundwater quality studies described above will provide an adequate basis for the regulatory agencies, particularly the Mackenzie Valley Land and Water Board, to determine the extent, if any, to which the YGP changes the quality of the aquatic environments that presently exist at the project site. Tyhee therefore submits that it should not be required, as proposed under Item 3) of Section 6.A, to provide a separate "...description of the sources and extent of pre-existing contamination". Accordingly, Tyhee requests that this requirement be deleted from the Terms of Reference.

3. Water Balance Study

Tyhee understands that a "water balance" consists of a model that describes the flow of water into *and out of* a system. The company therefore asks that Item 5) of Section 6.A, which refers to a "thorough prediction for water balance inflows to the mine site...", should be revised in order to better explain the underlying intent of this requirement and to clarify how Tyhee is expected to fulfill it.

4. Surface and Sub-surface Geology

Tyhee is uncertain of the meaning or underlying intent of Item 6) in Section 6.A, which requires "further depictions of surface and sub-surface geology". Unless this information is deemed necessary in order to complete the environmental assessment, Tyhee submits that it should not form part of the Terms of Reference and should therefore be deleted.

5. Aquatic Organisms and Aquatic Habitat, and Wildlife and Wildlife Habitat

Items 7) and 8) in Section 6.A provide no specifications or other guidance as to the scope of the additional aquatic and wildlife studies that the Review Board wishes Tyhee to undertake. As noted above, Tyhee believes that the company has collected sufficient bio-physical information for the environmental assessment. Tyhee therefore requests that the Terms of Reference specify the additional information pertaining to aquatic biota, wildlife and their respective habitats, if any, that is required in order to complete the environmental assessment and has not already been provided in the Project Description Report.

6. Local Air Quality

Tyhee notes that the PDR already incorporates information on air quality and anticipated atmospheric emissions from the YGP. Item 9 in Section 6.A, which requires Tyhee to provide a further "depiction of local air quality", does not provide any specifications or other guidance for the further studies that the Review Board envisages. Tyhee therefore requests that the Terms of Reference specify the additional information pertaining to air quality, if any, that is required in order to complete the assessment and has not already been provided in the PDR. Tyhee requests that any additional information or studies requested reflect the scope, nature and likely impacts of the activities that will take place at the YGP.

7. Permafrost

Tyhee submits that, as presently written, Item 10) in Section 6.A is unduly broad and does not explain the underlying intent. To the extent that further information on permafrost is required, Tyhee believes that it should focus on information necessary to assess the risk, if any, that changes in the existing permafrost regime at the project site could potentially give rise to “accidents and malfunctions” whose impact on the environment should be considered as part of the environmental assessment. Tyhee therefore requests that the Terms of Reference specify the information pertaining to permafrost that is reasonably necessary for the environmental assessment and inclusion in the DAR.

8. Physical and Chemical Makeup of Soils and Lake Sediments

The underlying intent of Item 11) in Section 6.A, which directs Tyhee to provide the “Physical and chemical makeup of soils and lake sediments for both control and footprint lakes, including those from Giauque Lake”, is unclear. Tyhee submits that, if the approach to water quality information outlined under item 1 above is adopted, all of the water and sediment quality information necessary for the environmental assessment will be available.

Consistent with the approach outlined under item 2 above, Tyhee questions the need to undertake sediment quality studies in Giauque Lake, except to the extent, if any, that such studies are reasonably required in relation to Tyhee’s proposed withdrawal of water from Giauque Lake for domestic purposes.

Tyhee therefore submits that Item 11 is redundant and should be deleted from the Terms of Reference.

9. Rare Plants

Tyhee notes, in relation to Item 12 of Section 6.A, that the PDR already provides information on rare plants and their communities. Tyhee therefore requests that the Terms of Reference specify the additional information of this kind, if any, that is required in order to complete the environmental assessment and has not already been provided in the PDR.

10. Mackenzie Valley Labour Pool

Tyhee understands that the requirements outlined in Item 13) of Section 6.1 are intended to produce a forecast of

- (i) the total number of individuals that Tyhee expects to employ for each phase of the YGP; and
- (ii) the number of individuals that Tyhee expects to engage from each of the seven communities that fall within the “Geographic Scope” of the project, as outlined in Section 4.2 of the draft Terms of Reference, in order to fulfill its workforce requirements.

On this basis, Tyhee questions the need to undertake a "...robust characterization of the Mackenzie Valley labour pool at varying scales...as well as territory-wide" as Item 13 currently proposes. In Tyhee's view, the studies to be undertaken should first identify which of the communities that are located within the "Geographic Scope" of the project are likely to be the source of employees for the YGP.

Tyhee submits that the study should then focus on collecting the information that is required to assess the extent, if any, that employment at the YGP has the potential to cause adverse impacts on the social and cultural environment in the home communities of its prospective employees, taking into account the socio-economic conditions that currently prevail in each of these communities. Tyhee submits that Item 11 of Section 6.A should be revised to reflect this approach.

11. Existing Physical Infrastructure

Tyhee submits that it should be required to report on existing physical infrastructure in the study area only to the extent that such infrastructure constitutes part of the "development" under assessment or to the extent that infrastructure not encompassed by the development could potentially have an impact on some aspect of it. Tyhee does not believe it should be required to report on infrastructure on privately owned lands within the study area, and understands that the responsibility to monitor and regulate infrastructure located on public lands rests with the landowner, namely the federal Crown. Tyhee therefore requests that Item 14) of Section 6.A be revised to encompass only infrastructure that is located on lands that constitute part of Tyhee's "development".

12. Socio-Economic Conditions and Indicators in Potentially Affected Communities

As outlined in item 10 above, Tyhee understands that an examination of the socio-economic conditions that currently prevail in each of the seven potentially affected communities will likely be required in order to assess the potential changes in the social and cultural environments of those communities as a result of employment at the YGP or as a consequence of the other impacts, if any, that the YGP may have on those communities.

Tyhee submits that the territorial and local government authorities, and not private sector companies are responsible for determining the "appropriate" socio-economic conditions and indicators for those communities. Tyhee believes that it should not be required to engage in such an exercise and therefore requests that Item 15) of Section 6.A be deleted from the Terms of Reference.

13. Historic and Existing Land Uses

Tyhee submits that the Terms of Reference should clearly identify the information pertaining to historic and existing land uses in the study area, and the data pertaining to cultural and heritage resources in the study area, if any, that are not

already included in the PDR and are required for the environmental assessment. Tyhee therefore requests that Item 16 in Section 6.A be revised accordingly.

## **B. Development Description**

### 1. Designation of Winter Lake as a Tailings Impoundment Area

The covering letter from the Review Board dated January 30, 2009 that accompanied the draft Terms of Reference states that the "...process for reclassifying any lake as a *Tailings Impoundment Area* via Schedule 2 of the Metal Mining Effluent Regulations in the *Fisheries Act* will be **in parallel** with the environmental assessment of the Yellowknife Gold Project." (emphasis added). The letter goes on to invite interested parties to "identify any additional information requirements for this reclassification to avoid the need for a separate information-gathering process."

Tyhee understand that the Department of Fisheries and Oceans ("**DFO**") and the federal Department of the Environment ("**Environment Canada**") jointly administer the *Fisheries Act* and the Metal Mining Effluent Regulations (the "**MMER**") that are promulgated under that statute. This view is supported by a "Fact Sheet" pertaining to the deposit of tailings into a natural water body pursuant to the MMER posted on the DFO website that reads, in part as follows:

"DFO, Environment Canada and Natural Resources Canada work closely to conduct a thorough analysis of tailings management options by the developer. This ensures that if a tailings impoundment area option is selected, it is the most environmentally and socio-economically sensible approach."

Tyhee would therefore ask that the Review Board clarify the role that it plays in this process in order to explain how the application to designate Winter Lake for tailings impoundment purposes will proceed "in parallel" with the environmental assessment of the YGP, as outlined in the covering letter.

Given the importance of ensuring a satisfactory solution for tailings deposition and storage, Tyhee also intends to approach DFO and Environment Canada for further clarification of how they envisage the application under the MMER will proceed in conjunction with the environmental assessment of the YGP.

### 2. Use of the Tailings Impoundment Area

Item 1a) in Section 6.B implies that "toxic compounds" from sources other than the YGP will be deposited into the tailings impoundment area and requires that such compounds be taken into account in the description of the tailings impoundment area. The tailings impoundment area is intended exclusively for the deposition and long-term retention of tailings. Tyhee does not intend to deposit, or to permit others to deposit, other material into the tailings impoundment area that is not directly related to the YGP. Tyhee therefore requests that the reference

to other “toxic compounds regardless of source” be deleted from Item 1a) in Section 6.B.

3. Geological and Geothermal Analyses

Tyhee submits that any requirement for geological or geothermal analyses should be related to the construction, operation, integrity and eventual reclamation and abandonment of the structures that may be required in order to establish and operate the tailings impoundment area. Tyhee anticipates that the company will provide the engineering design and specifications for any such structure, including any relevant geological and geothermal data, in support of the deliberations that will eventually take place before the Mackenzie Valley Land and Water Board when Tyhee proceeds with its application for a licence to use water and dispose of waste under the *Northwest Territories Waters Act*. Tyhee therefore believes that it is premature to require this information as part of the environmental assessment and requests that Item 1c) in Section 6.B of the draft Terms of Reference be deleted.

4. Engineering Designs and Specifications – Tailings Impoundment Area

Tyhee does not expect to complete full engineering designs and specifications for the tailings impoundment area until the project reaches the regulatory phase. As a result, this information is unlikely to be available for inclusion in the DAR. Tyhee therefore requests that Item 2) in Section 6.B be revised to specify that “conceptual level” details only are required.

5. Discovery Mine Airstrip

Tyhee requests that Item 3) in Section 6.B be revised to specify the information required in relation to Tyhee’s use of the historic Discovery Mine airstrip that has not already been provided in accordance with the Land Use Permit that Tyhee currently holds pursuant to the Mackenzie Valley Land Use Regulations.

6. Description of Infrastructure

Tyhee requests that Item 4) of Section 6.B be revised to indicate the information concerning the infrastructure and mine development plans for the Nicholas and Ormsby deposits, if any, that has not already been provided in the PDR.

7. Properties of Construction Materials

Tyhee requests that Item 5) of Section 6.B be revised to identify the specific measurements, tests or other determinations that the Review Board expects Tyhee to conduct in relation to the rock or aggregate that may be used for construction purposes at the YGP.

8. Water Use

Tyhee notes that the water balance to be prepared in response to Item 5) of Section 6.A of the Terms of Reference will provide a comprehensive quantitative overview of all major uses at the YGP. The requirement to predict “water use volumes” under Item 8) of Section 6.B is redundant and should therefore be deleted from the Terms of Reference.

9. Proposed Dewatering

Tyhee notes that the “dewatering” of any natural water body constitutes “use of water” pursuant to the *Northwest Territories Waters Act* and therefore requires a licence in order to be lawfully carried out. Tyhee therefore requests that the information required under Item 9) of Section 6.B be limited to a conceptual level and that detailed scheduling be deferred until the regulatory phase.

10. Chemical and Reagent Use

Tyhee notes that the PDR provided information concerning the chemicals and reagents that are expected to be used at the YGP and therefore questions the scope of the requirement in Item 10) in Section 6.B to provide “full account of every chemical or other reagent that Tyhee will need during the milling process”. Tyhee requests that this request be limited to information, if any, that is required in order for the environmental assessment that Tyhee has not yet provided or is not otherwise publicly available.

11. All Season or Winter Roads

Tyhee submits the information required in response to Item 11) in Section 6.B in relation to all-season and winter roads and stream crossings should be limited to conceptual level designs. The company notes that stream crossings will be reviewed in full detail in relation to any permits or authorizations that Tyhee may require pursuant to the *Fisheries Act* or the *Navigable Waters Protection Act*.

12. Use of Water From Giauque Lake

Tyhee requests that Item 12) in Section 6.B be revised so as to require provision of a conceptual-level design for the water intake facilities at Giauque Lake and the domestic water pipeline. Tyhee expects to provide full details of these installations to the Mackenzie Valley Land and Water Board in support of the company’s application for a licence to use water and dispose of waste in accordance with the *Northwest Territories Waters Act* during the regulatory phase of the project.

13. Process Plan and Accessory Installations

Tyhee requests that Items 13) and 14) in Section 6.B be revised to specify the information, if any, that pertains to the process plant and accessory installations

that is required for the environmental assessment and has not already been provided in the PDR.

14. Explosives

Tyhee understands that the storage, management and use of explosives are regulated by Natural Resources Canada pursuant to the federal *Explosives Act* and the Explosives Regulations. Tyhee therefore requests that Item 15) in Section 6.B be revised so as to require a description of the measures that Tyhee will implement to ensure that its explosives management and safety practices minimize the risk of non-compliance with the project's *Explosives Act* permit or any other licence, permit or other authorization issued for the project, and are reasonably necessary in order to mitigate any other potential adverse impact on the environment attributable to the use of explosives at the YGP.

15. Capital and Operating Costs

Tyhee notes that detailed capital and operating costs for the project will be estimated as part of the feasibility study that has not yet been conducted. As a result, only preliminary estimates of capital and operating costs will be available for the DAR. Tyhee requests that Items 17) and 18) in Section 6.B be revised accordingly.

16. Project Lifespan, Employment Requirements and Personnel Arrangements

Tyhee notes that the information of the kinds contemplated by Items 19), 20) and 21) in Section 6.B has already been provided in the PDR and requests that the Terms of Reference specify any additional information that is necessary to conduct the environmental assessment.

**C. Consideration of Alternatives**

1. Designation of Winter Lake for Tailings Impoundment

As outlined in the response to Section B.1 of the draft Terms of Reference above, Tyhee has asked the Review Board to clarify the board's role in the process applicable to Tyhee's application to have Winter Lake designated under Schedule II of the MMER for tailings impoundment purposes. Tyhee is particularly interested in knowing how the MMER process will proceed "in parallel" with the environmental assessment of the YGP. As also noted, Tyhee intends to approach DFO and Environment Canada for further clarification of how they intend to manage Tyhee's application under the MMER.

Tyhee therefore reserves the right to comment further on Item 1 in Section 6.C once it has received more information about the relationship between the environmental assessment process and the process to be followed in accordance with the MMER.



2. Cyanide Use

The use of sodium cyanide in the gold metallurgical extraction process is standard industry practice, and Tyhee therefore requests that Item 2 of Section 6.C be deleted from the Terms of Reference.

3. Alternative Airstrip

As Tyhee intends to continue using the existing airstrip at the historic Discovery Mine, the company has no plans to investigate alternative airstrip locations. Based on its discussions with the Contaminant and Remediation Directorate of Indian and Northern Affairs Canada (“**INAC-CARD**”), Tyhee anticipates that use of the existing airstrip can continue, provided that the risk of potential adverse impacts on the underlying tailings cap is minimized. During Tyhee’s advanced exploration activities, we have shown that this is possible. In addition, Tyhee has provided a general upgraded design for the airstrip as required by the company’s current land use permit. Discussions with INAC-CARD will continue as the project advances through the environmental and regulatory phases. Tyhee therefore requests that Item 3 of Section 6.C be deleted from the Terms of Reference.

4. Alternatives to the Existing Winter Road Route

Tyhee notes that during the 2007 and 2008 winter road seasons, the Tibbitt to Contwoyto Winter Road consortium utilized a substantial portion of the established winter road to the historic Discovery Mine area as a secondary route for vehicles returning from the diamond mines situated the north and east. While the consortium has elected not to open this secondary route for the current year, Tyhee has concluded that the existing winter road alignment, which has been in place for decades, remains the best alternative for primary winter road access between Yellowknife and the project area. As a result, Tyhee does not believe it would be productive to study alternative winter road routes and therefore requests that Item 4) of Section 6.C be deleted from the Terms of Reference.

5. Prolonging Mine Life

Tyhee requests that Item 5) in Section 6.C be deleted from the Terms of Reference. The company believes that it is acting not only in the best interests of its shareholders (to whom it owes a fiduciary duty) but also in the best interests of the Northwest Territories by proposing a development and production schedule that reflects the best technical, economic and operational practices. To distort these principles in the hope of artificially prolonging mine life could very well compromise the viability of the project, and therefore work to the disadvantage of all stakeholders. Tyhee questions whether a request of this kind can properly be included in the Terms of Reference for an environmental assessment conducted pursuant to the MVRMA.

6. Alternative Methods for Tailings Disposal

Tyhee submits that the Terms of Reference should respond to the specific development that Tyhee has proposed, and to reasonably feasible ways of carrying out the development, and should not extend to the use of property and facilities that are not owned by or under the control of Tyhee such as the Discovery Mine property. Tyhee therefore requests that Item 6) in Section 6.C of the draft Terms of Reference be deleted.

7. Transport of Ore from Nicholas Lake

In the PDR, Tyhee stated that ore from Nicholas Lake would be transported to the Ormsby processing facilities by a winter road, or alternately, by way of an all weather road. Tyhee has studied the potential impacts of an all weather road on the biophysical environment, and included the results in the PDR. Tyhee submits that any “ranking” of the alternatives is unnecessary, given both of the available options have been explained in the PDR. Tyhee therefore requests that Item 8 in Section 6 C be deleted from the Terms of Reference or re-written to clearly state what is required in addition to what is already available in the PDR.

8. Alternatives to Diesel Power Generation

Tyhee reiterates its view that the environmental assessment should focus on the development as outlined in the PDR and that the company should not be required to consider every conceivable alternative means of carrying out the project, irrespective of their economic viability. Tyhee therefore requests that Item 9) in Section 6.C of the draft terms of reference be deleted or be revised to clearly state what is required.

**D. Community Engagement**

1. Concerns with Consultation to Date

Tyhee notes that, in the draft Terms of Reference, the Review Board states that “various parties” expressed concerns during the scoping phase that Tyhee had failed to solicit their views in relation to “many project aspects”. Tyhee requests that the Review Board indicate which parties expressed these concerns and identify the aspects of the development where consultation, , thus far, is alleged to have been inadequate. Without this information, it is difficult for Tyhee to address these allegations or to fully appreciate the requirement to provide “augmented evidence”, as contemplated in the draft Terms of Reference, in confirmation of the company’s community engagement initiatives. Tyhee also notes the PDR provided extensive information on the community consultation conducted to date which, in Tyhee’s view, is sufficient for the environmental assessment.

2. Responsibility to Fulfill the Duty to Consul

Tyhee notes that the draft Terms of Reference omit any reference to the well-established legal principle that the constitutional duty to consult with and, where appropriate, to accommodate the concerns of Aboriginal people, is a duty of the Crown. Tyhee submits the Terms of Reference should outline the Review Board's expectations in relation to the aspects of consultation and accommodation that the Crown should address and those that are Tyhee's responsibility. Once this additional clarification has been provided, Tyhee will be in a better position to assess the specific requirements for consultation and accommodation that the Review Board may establish in accordance with the Terms of Reference.

3. Consultation Requirements for Tailings Area Designation

As outlined in the response to Section B, Item 1 above, Tyhee intends to seek additional clarification from DFO and Environment Canada in relation to the process whereby, if Tyhee's application succeeds, Winter Lake would be designated as a tailings impoundment area pursuant to the MMER. As part of this inquiry, Tyhee intends to pursue a better understanding of how the federal government will fulfill its constitutional duty to consult with, and if appropriate, to accommodate Aboriginal people, if the decision to accede to Tyhee's request infringes an Aboriginal or treaty right. Tyhee will also endeavour to fully appreciate the extent to which the federal government proposes that Tyhee be involved in the Aboriginal consultation and accommodation process.

As part of this inquiry, Tyhee will also discuss with DFO and Environment Canada the "compensation plan" that is required under section 27.1 of the MMER before the operator can lawfully deposit a deleterious substance into a tailings impoundment area that is added to Schedule 2 of the regulations. These discussions will also focus on the department's "no net loss of habitat" policy. Until Tyhee has this additional information in hand, it is difficult to determine whether the requirements that the Review Board has set out under Item 3) of Section 6.D are appropriate, particularly the apparent requirement that consultation be "National" in scope. Tyhee therefore reserves the right to respond further to these aspects of the draft Terms of Reference.

**E. Water Resources**

1. Relationship to Discovery Mine

Tyhee requests that the Review Board explain the meaning of the first sentence of the "Preamble" to this Section. To Tyhee's knowledge, the "contamination" attributable to operations at the historic Discovery Mine resulted from the uncontained disposal of tailings that were generated in a mill circuit that involved the use of mercury amalgamation to recover gold. Tyhee is not aware of any reason why its proposed operations, which will incorporate modern standards, processes and safeguards, have the potential to exacerbate the existing mercury contamination. Tyhee therefore submits that the Terms of Reference should not

imply that the YGP has the potential to worsen any impact attributable to the historic Discovery Mine.

2. Establishment of Discharge Criteria

Tyhee questions whether it is correct for the “Preamble” to assert that the environmental assessment process may *establish* discharge criteria more stringent than those set out in the Metal Mining Regulations. As outlined in section 128(1) of the MVRMA, where the Review Board forms the opinion that the proposed development is likely to have a significant adverse impact on the environment, the Review Board is empowered to **recommend** that “...the approval of the proposal be made subject to the imposition of such measures as [the Review Board] considers necessary to prevent the significant adverse impact. (emphasis added)”.

Subject to the approval of the Review Board’s recommendation by the responsible Ministers, the development then proceeds to the regulatory phase. Tyhee understands that the Mackenzie Valley Land and Water Board would then determine the effluent quality criteria the development is required to meet in accordance with the *Northwest Territories Waters Act*.

3. Information Pertaining to Tailings

Tyhee submits that the level of detail outlined under Item 1) of Section 6.E would be better addressed during the regulatory phase, and suggests that these requirements go beyond what is appropriate in order to conduct an environmental assessment. In Tyhee’s view, the Terms of Reference should focus on information necessary for the Review Board to form an opinion, as contemplated by section 128(1) of the MVRMA, of the potential of the project to have a significant adverse effect on the environment.

As a result, Tyhee believes the information required in relation to tailings should be comprised of (i) the anticipated quantity of waste material that will be stored in the tailings impoundment area as a result of milling operations; (ii) the anticipated chemical and physical properties of that material; (iii) the quantity of effluent that is expected to be discharged from the tailings impoundment area; (iv) the anticipated rate of discharge of effluent; and (v) the anticipated chemical and physical properties of that effluent. The DAR would also include a predication of the total quantities of contaminants that are expected to be discharged from the Tailings Containment Area over the life of the operation, and Tyhee’s prediction of the ultimate fate and final effects, if any, of those elements and compounds in the receiving ecosystems, as contemplated under Item 4 of Section 6.D.

It is Tyhee’s view, however, that a detailed review of the facilities, practices and procedures that Tyhee will implement in order to comply with the effluent quality criteria that are ultimately established for the project during the regulatory phase, are better addressed during that stage of the project approval process. As a result, Tyhee submits that further evaluation of these measures should be deferred until that time. Tyhee therefore requests that Item 1) of Section 6.E be revised to reflect the foregoing.

4. Environmental Effects Monitoring

Tyhee is cognizant of the obligation to undertake environmental effects monitoring studies in accordance with Section 7 and Schedule 5 of the Metal Mining Effluent Regulations. The company therefore requests that the Review Board clarify whether the studies outlined in Item 2) of Section 6.E are intended to be in addition to the requirements established under the MMER. If that is the case, Tyhee reserves the right to submit further comments.

5. Water Quality Monitoring and Management

- (a) As pointed out in the immediately preceding paragraph, the issues raised in Item 7a) of Section 6.E will be addressed through the environmental effects monitoring program to be conducted in accordance with Section 7 and Schedule 5 of the Metal Mining Effluent Regulations. To the extent deemed appropriate by the Mackenzie Valley Land and Water Board, the mitigation of any adverse impacts on the aquatic environment and aquatic biota will be addressed during the regulatory phase. Likewise, Tyhee anticipates that the need for an “Adaptive Management” strategy will be determined through the regulatory process. Tyhee therefore request that Items 7a) and 7b) of Section 6.E be deleted from the Terms of Reference.
- (b) Item 7c) of Section 6.E appears to presume that Tyhee will necessarily be in possession of traditional ecological knowledge relevant to water use and waste disposal. While Tyhee endorses the important role played by traditional knowledge in the environmental assessment process, Tyhee cannot guarantee that the company will necessarily be granted access to such knowledge. Tyhee requests that Item 7c) of Section 6.E be deleted from the Terms of Reference.

6. Hydrology

Tyhee notes that hydrological data and information have already been presented in the PDR and therefore requests that Item 8) of Section 6.E be revised to specifically indicate the hydrological data and information that is required and not already set out in the PDR.

7. Metal Leaching and Acid Rock Drainage Information

In Tyhee’s view, Item 9) of Section 6.E appears to duplicate requirements that are already addressed elsewhere in the draft Terms of Reference. Specifically, Item 6) in Section 6.B. requires a description of the facilities for the placement and storage of ore, waste rock and overburden with a particular emphasis on material that may be acid-producing or metal-leaching. As outlined above, Tyhee intends to include the anticipated chemical and physical properties of effluent from the Tailings Containment Area and of the tailings themselves in the DAR. The DAR will also provide a prediction of the dispersion and fate of potentially harmful elements or compounds in the effluent released from the Tailings Impoundment

Area or the Nicholas Lake operations. Tyhee therefore requests that Item 9) in Section 6.C be deleted from the Terms of Reference.

8. Generation of Acid and Metal Leaching in Tailings

As outlined under Item 3 above, Tyhee anticipates that the DAR will incorporate a characterization of the tailings material and effluent from the Tailings Impoundment Area. Mitigation measures will be described if these studies indicate any significant potential for the tailings material to generate acid or to leach metals in concentrations that could potentially have an adverse impact on the receiving environment. The requirements contemplated by Item 10) in Section 6.E are therefore redundant and should be deleted from the Terms of Reference.

9. Yellowknife River Monitoring

Given the nature of the effluent that the YGP is expected to produce, and taking into account the distance between the final point of discharge and the City of Yellowknife water intake, Tyhee views the risk of adversely affecting the quality of Yellowknife's potable water as extremely remote if not entirely non-existent. Tyhee nonetheless anticipates that the monitoring and surveillance program that will constitute part of the water licence that Tyhee will receive pursuant to the *Northwest Territories Waters Act* will alert the responsible government authorities and Tyhee to any adverse change in the quality of water in the Yellowknife River system attributable to the YGP. In those unlikely circumstances, additional monitoring could readily be implemented. Tyhee therefore believes that any requirement to consider remote water quality monitoring stations is premature, and that Item 11) in Section 6.C should be deleted from the Terms of Reference.

10. Groundwater Studies

Tyhee requests that Item 12) in Section 6.E be revised in order to provide any information that has not already been presented in the PDR that is required in order to assess the effects, if any, that open pit and underground mining operations may have on the groundwater regime in the vicinity of the Ormsby and Nicholas Lake operations and to evaluate the potential, if any, for these effects to have an adverse impact on the environment.

11. Minewater Discharge Information

Tyhee anticipates that the issues addressed in Items 13.b) and 13.c) of Section 6.E will be covered in the groundwater information to be provided under Item 12) of Section 6.E, and therefore requests that Items 13.b) and 13.c) be deleted from the Terms of Reference.

12. Erosion and Sedimentation

Tyhee is confused by the apparent inference in Item 14) of Section 6.E that the YGP will promote erosion and sedimentation. The company understands that

suspended solids have long been recognized as a “deleterious substance” for purposes of the *Fisheries Act*. Tyhee therefore submits that any deposition of suspended solids into fish-bearing waters through erosion or sedimentation at YGP operations is prohibited and could be the subject of enforcement action. Tyhee submits that Item 14) of Section 6.E is redundant and should therefore be deleted from the Terms of Reference.

13. Discharge of Dewatering Effluent

Tyhee anticipates that the effects on the environment, if any, arising from the discharge of dewatering effluent will be addressed through the study of minewater effluent contemplated by Item 13 of Section 6.E. Tyhee submits that Item 15) of Section 6.E is therefore redundant and should be deleted from the Terms of Reference.

14. Use of Water from Nicholas Lake and Giauque Lake

Tyhee notes that information pertaining to the use of water from Nicholas Lake and Giauque Lake has already been provided in the PDR and therefore requests that Items 16) and 17) of Section 6.E be revised to specify the information, if any, that is required for the environmental assessment and has not already been provided in the PDR.

**F. Fish and Aquatic Habitat**

1. Application to Designate Winter Lake for Tailings Disposal

As outlined above, Tyhee places great urgency on clarifying the relationship between the environmental assessment process administered by the Review Board and the process for designation of Winter Lake as a Tailings Impoundment Area administered by DFO and Environment Canada. As also noted earlier, this process includes the preparation of a compensation plan under section 27.1 of the Metal Mining Effluent Regulations as well as complying with the “guiding principle” of no net loss of fish habitat.

To avoid any duplication or inconsistency between the requirements of the environmental assessment process and those of the Metal Mining Effluent Regulations process, Tyhee requests that Items 1) through 7), inclusive, of Section 6.F of the Terms of Reference be revised to simply state that Tyhee must conform to the requirements of the *Fisheries Act* and regulations and, to the extent possible, that the company must present evidence of having fulfilled these requirements as part of DAR.

2. Assessment of Potential Impacts on Aquatic Organisms and Habitats

Tyhee submits that Items 8), 9) and 10) of Section 6.F address matters that are already addressed by (i) the environmental effects monitoring studies that Tyhee will be required to conduct pursuant to the MMER; (ii) the general prohibition in the *Fisheries Act* against the deposit of deleterious substances in water frequented

by fish; and (iii) the general prohibition in the Act against the harmful alteration, disruption or destruction of fish habitat. Tyhee therefore requests that Item 8), 9) and 10) of Section 6.F be revised to require Tyhee to indicate the measures it intends to take in order to ensure compliance with the requirements of the MMER and the general provisions of the *Fisheries Act*.

3. Nicholas Lake Water Use

Tyhee anticipates that the adverse impact, if any, of the use of water from Nicholas Lake in support of YGP operations will be addressed in the regulatory phase. Tyhee anticipates that such water use will be incorporated in a single licence that covers all water use and waste disposal at the YGP, which would be Tyhee's preference. Alternatively, water use at Nicholas Lake could be addressed in a water licence specific to the Nicholas Lake activities. Accordingly, Tyhee believes that Item 11) of Section 6.F is premature and should be deleted from the Terms of Reference.

4. Giauque Lake Water Use

In Tyhee's view, Items 12) and 13) of Section 6.F outline studies specific to Giauque Lake and its biota that are not commensurate with the proposed use of water for domestic and process purposes. These requirements infer that this use of water has the potential to increase "contaminant concentrations" (presumably mercury) in fish tissue. Tyhee does not share this view and believes that any potential adverse impact on Giauque Lake can be adequately addressed during the regulatory phase. Tyhee therefore requests that Items 12) and 13) of Section 6.F be deleted from the Terms of Reference.

**G. Wildlife and Wildlife Habitat**

1. Wildlife Studies

Despite the harsh climatic conditions that prevail at the YGP site, particularly during the winter months, a large and diverse group of animals are potentially found in the vicinity of the project site. As outlined in the PDR, they include:

- (i) 19 species of mammals;
- (ii) 47 species of upland nesting birds;
- (iii) 15 species of raptors; and
- (iv) 24 species of waterfowl,

for a total of 105 animal species.

As presently written, Items 1), 2) and 3) of Section 6.G of the draft Terms of Reference could conceivably require Tyhee to assess the impact of the YGP on all 105 species unless, as the Terms of Reference state, "...the Developer has a strong case" for excluding a particular species.



Moreover, Item 2) of Section 6.G incorporates by reference the requirements set out in the “General Considerations” portion of the document that require Tyhee to predict the mode of the impact on each such species as determined pursuant to the “impact prediction criteria” and to do so for each “project component” that the Developer has identified.

In addition, Item 4) of Section 6.G requires Tyhee to submit a “Wildlife Management Plan” that (i) includes monitoring of essentially all of the animals that frequent the area surrounding the project; (ii) distinguishes between the effects of the project on those animals and the effects of natural phenomena (iii) incorporates special measures to accommodate any rare or endangered species; (iv) and sets out “adaptive management measures” that will “...avoid, minimize, and mitigate effects on wildlife when Tyhee detects problems for wildlife that the development has caused.”

Item 6) of Section 6.G goes on to specify that the Developer’s Assessment Report must include “...an analysis of how the project may block migratory routes or confuse migratory animals...” along with the measures that Tyhee proposes to minimize adverse impacts.

Taken together, these requirements would require a very detailed and elaborate set of investigations involving several different wildlife specialists and an extensive set of studies to determine the scope and origin of the potential impacts of the project on a wide variety of organisms. Tyhee believes that the scope, nature and extent of the proposed studies are out of keeping with the potential impacts of the project and should therefore be reconsidered.

To that end, Tyhee asks that the Review Board revise the wildlife study requirements in order to focus the study on wildlife species of greatest concern, notably caribou, and narrow the scope of the studies to potential impacts that have been documented as a result of the construction and operation of mining facilities of similar size to the YGP at other locations. In revising the Terms of Reference, Tyhee also requests that the Review Board take into account the wildlife data and observations that have already been provided in the PDR.

## **H. Vegetation**

- (a) Tyhee submits that the requirements set out under Item 1) of Section 6.H are not commensurate with the scope and scale of the YGP. Tyhee believes that the information on vegetation submitted in the PDR is sufficient for the environmental assessment, and therefore requests that Item 1) of Section 6.H be deleted from the Terms of Reference. Tyhee also notes that there is no “Responsible Minister” to whom the company would report the results of the “adaptive management plan” for mitigation of the project’s impacts on vegetation, as contemplated by Item 2) of Section 6.H.

- (b) Tyhee does not believe that the removal of vegetation in order to construct and operate the YGP will have a significant adverse impact on local wildlife populations. Nonetheless, if a study of these effects is warranted, Tyhee believes that it would best be conducted during actual operations and therefore be addressed during the regulatory phase. Tyhee therefore asks that Section 6.H, Item 3, be deleted from the Terms of Reference.

## **I. Terrain**

- (a) Without additional information, Tyhee is not able to discern how, as outlined in Item 1) of Section 6.I, the company would “quantify” how each project component...would impact the surrounding environment.” Tyhee believes that the extensive series of studies, investigations and measurements that are otherwise provided for in the PDR are sufficient for the environmental assessment and therefore requests that Item 1) of Section 6.I be deleted from the draft Terms of Reference.
- (b) Tyhee understands that the items contemplated by Item 2 of Section 6.I of the draft Terms of Reference will be addressed, to the extent necessary, through the Land Use Permit administered by the Mackenzie Valley Land and Water Board at the regulatory phase. Tyhee therefore requests that Item 2 of Section 6.I be deleted from the draft Terms of Reference.
- (c) The potential effects of permafrost on the YGP and *vice versa* are addressed elsewhere in the Terms of Reference. Tyhee therefore requests that Item 3 of Section 6.I be deleted from the draft Terms of Reference.

## **J. Air Quality and Climate**

Please refer to the company’s comments with respect to air studies under Section 6.A above.

## **K Assessment of the Human Environment**

### **K.1 Employment and Business Opportunities**

Tyhee understands that section 115 of the MVRMA requires that the environmental assessment process carried out under Part 5 have regard to, among other matters, “...the protection of the social, cultural and economic well-being of the residents and communities in the Mackenzie Valley.” Tyhee understands that the principal underlying purpose of this provision is to ensure that an environmental assessment gives full consideration to any impacts from a proposed development that could *adversely affect* the “social, cultural and economic well-being of the residents and communities of the Mackenzie Valley.” In Tyhee’s view, the draft Terms of Reference could be construed to adopt a different approach under which the developer must present evidence of how the proposed development will *enhance* the economic well-being of the residents and communities of the Mackenzie Valley.

Tyhee is confident that, like other modern mining operations, the YGP will indeed provide important benefits to the residents and communities of the Mackenzie Valley [and will do so in a manner that protects their social, cultural and economic well-being, consistent with the scope and nature of the operations that the YGP will undertake.

Nonetheless, the company believes that the extensive information requirements set out in Section K-1 of the draft Terms of Reference exceed what is reasonably required for the environmental assessment, having due regard to the scope and nature of the YGP. Moreover, in Tyhee's view, these requirements may potentially infringe upon the responsibilities that properly fall within the mandate of Government of the NWT, particularly those related to employment, training, economic development and community development

Tyhee therefore requests that the Review Board reconsider the requirements set out in Section K-1 of the draft Terms of Reference to focus on the underlying intent of the applicable provisions of the MVRMA, taking into account the responsibilities, mandates and programs administered by other governmental agencies.

In addition, given the scope and magnitude of the YGP, Tyhee requests that any socio-economic studies that the company is required to undertake should focus on the seven communities identified in the "Geographic Scope" of the project and not encompass the entire Mackenzie Valley.

## **K-2 Distribution of Beneficial and Adverse Economic Impacts**

### **1. Revenue, Expenditure and Commodity Pricing Predictions**

Tyhee would like to advise the Review Board that the final information pertaining to anticipated revenues, expenditures and commodity prices that is requested under Item 1a) of Section K-2 may be material to the company and must therefore be disclosed in compliance with the applicable securities regulations and stock exchange rules. The company anticipates that this information will be included in the feasibility study for the project that is expected to be completed at a later stage and will be publicly disclosed in a timely manner. Tyhee therefore asks Item 1a) of Section K-2 be deleted from the draft Terms of Reference. For similar reasons, Item 1b) of Section K-2 should also be deleted from the draft Terms of Reference.

### **2. Other Proposed Information Requirements**

Tyhee submits that the results of the analyses contemplated by Items 1c) through 1g) of Section K-2 would likely be speculative in nature given that economic conditions in the Mackenzie Valley are subject to a wide variety of influences. As a result, it would be virtually impossible to distinguish the effects of the YGP from those of other factors that are unrelated to Tyhee's activities. Tyhee therefore requests that these provisions be deleted from the draft Terms of Reference.

3. Economic Benefits for Individual Communities

The information requested under Item 2) of Section K-2 will be impossible to generate until the number of individuals who will be employed from each of the “smaller communities”, from Yellowknife and from other areas of the country, and until the distribution of agreements for the provision of goods and services for the YGP has been established. Tyhee therefore requests that Item 2) of Section K-2 be deleted from the draft Terms of Reference.

4. “Adverse Pressures” on Other Organizations and Businesses

Tyhee believes that the information requested under Item 3) of Section K-2 would be speculative in nature and therefore unreliable, given that the impacts that these provisions ask Tyhee to determine may be subject to a wide variety of factors beyond the knowledge or control of Tyhee. The company therefore requests that Item 3) of Section K-2 be deleted from the draft Terms of Reference.

5. Assessment of “Vulnerable Sub-Populations”

For reasons similar to those outlined immediately above, Tyhee questions the need for the assessment contemplated under Item 4) of Section K-2 and doubts that it would be possible to conduct a reliable study of this kind in any event. The company therefore requests that Item 4) of Section K-2 be deleted from the Terms of Reference.

6. Mitigation of Adverse Economic Impacts

Tyhee submits that adverse economic impacts in the communities within the geographic scope for the project, or even more so elsewhere in the Mackenzie Valley, may arise for reasons entirely unrelated to the YGP. Therefore, even if Tyhee were to develop “policies, strategies, plans and commitments” to mitigate such impacts as contemplated by Item 6) of Section K-2 of the draft Terms of Reference, such policies and strategies may be entirely ineffective in mitigating adverse economic impacts. Moreover, this requirement implies that the duty to rectify adverse developments falls exclusively on the shoulders of developers and ignores the essential role played by government. Tyhee submits that Item 6 of Section K-2 is unlikely to serve a useful purpose in the environmental assessment and should therefore be deleted from the draft Terms of Reference.

**K-3 Social Impacts**

1. Community Health and Social Issues

Tyhee submits that the “Human Resources Management Plan” contemplated by Item 3) in Section K-3 will be sufficient to satisfy the obligations of the company, as an employer, to address social problems or challenges experienced by members of its workforce. Except to the extent that they impact on conditions in the workplace, Tyhee understands that the matters addressed in Items 1), 2) and 4) of

Section K-3 are typically the responsibilities of government. Tyhee therefore requests that Items 1), 2) and 4) be deleted from the draft Terms of Reference.

2. Interaction with Other Developments (Past, Present or Pending)

Tyhee questions whether the requirements outlined in Item 5 of Section K-3 can properly be included in the Terms of Reference assuming, without conceding, that the investigation contemplated by this provision could ever, in fact, be completed. Tyhee does not believe that it has an obligation to assess the effects of its own project on the "...political development, social development, cultural values, traditions and language among Mackenzie Valley communities", let alone the effects of the YGP in combination with "...other developments (either past, present or pending)." Tyhee therefore requests that Item 5 of Section K-3 be deleted from the Terms of Reference.

3. Effects on "Valued Social Components"

Given that Item 6) of Section K-3 of the draft Terms of Reference does not define the term "valued social components", it is difficult for Tyhee to respond to the proposed requirements under this item. However, Tyhee is not convinced that a study of the kind contemplated by Item 6) of Section K-3 is necessary or appropriate for purposes of the environmental assessment, and therefore requests that it be deleted from the draft Terms of Reference.

4. Distribution of Social Impacts among Communities

For reasons similar to those set out in relation to the distribution of economic benefits in item 3 under heading K-2 above, the distribution of potential social impacts among the communities defined in the "Geographic Scope" of the project is expected to be a function of the distribution of employees among those communities. As the information will not be available for purposes of the environmental assessment, Tyhee requests that Item 8) of Section K-3 be deleted from the Terms of Reference.

**K-4 Cultural Impacts**

**K-4.1 Heritage Resources**

1. Concerns Pertaining to Archeological Assessments

Tyhee requests that the Review Board identify the Aboriginal organizations who, according to the "Preamble" to Section K-4.1, have expressed concern that Tyhee's archeological investigations may be incomplete. The specific areas of concern should also be described. Tyhee requires this information to enable the company to understand the concerns and take any action that may be required.

2. Definition of “Heritage Resources”

Tyhee notes that the Review Board states, in the “Preamble” to this section, that the term “heritage resources” includes “...both archeological artifacts and sacred places”.

In section 2 of the MVRMA, the definition of “heritage resources” reads as follows:

“heritage resources” means archeological or historic sites, burial sites, **artifacts and other objects** of historical, cultural or religious significance, and historical or cultural records.”

Tyhee does not understand how the plain meaning of these words can be taken to include “sacred places” and is not aware of any decision of the courts that would impart this meaning to the definition. Tyhee would therefore be grateful if the Review Board could provide further explanation of its approach.

3. Accountability for Discovery Mine Facilities

Tyhee does not understand the basis of the Review Board’s statement in the “Preamble” that Tyhee has become “accountable” for impacts on “cultural heritage resources” attributable to facilities constructed in support of the Discovery Mine during the time when these facilities were in use by a corporation other than Tyhee. While Tyhee accepts responsibility for the consequences of its own actions, the company declines accountability for the actions of anyone else unrelated to Tyhee, and therefore requests that the statement in question be deleted from the draft Terms of Reference.

**K-4.2 Traditional Land Use and Wildlife Harvesting**

1. Unauthorized Occupancy of Crown Land and Regulation of Hunting

Responding to the unauthorized occupancy of Crown land and managing hunting activities are within the respective jurisdictions of the federal and territorial governments. Tyhee does not understand why the Review Board would require Tyhee to assume responsibility for controlling the conduct of the general public in regard to these matters. Tyhee therefore requests that Item 2 of Section K-4.2 be deleted from the draft Terms of Reference.

**L. Accidents and Malfunctions**

1. Adequacy of Precipitation Data

Tyhee requests the Review Board to identify the party who expressed concern during the scoping process in relation to Tyhee’s use of a 10-year interval for events of maximum precipitation.

2. Use of the Term “Guidelines”

In Tyhee’s experience, the term “guidelines” is generally used to describe non-binding directions issued by a government or regulatory authority to provide direction of a general nature on a particular subject. The use of this term in the “Preamble” and again in Item 5) of Section 6.L is inappropriate, and Tyhee therefore suggests that it be removed.

3. Responses to Vehicular and Industrial Accidents

Tyhee understands that the Government of the NWT is responsible for worker health and safety of workers generally and for mine safety in particular, and would have jurisdiction over the care of critically ill or injured persons at the YGP. Tyhee therefore requests that Items 4f) and 8) of Section 6.L be deleted from the draft Terms of Reference

**M. Cumulative Effects**

1. Definition of “Valued Components”

Given the importance of “Valued Components” throughout the environmental assessment process, including the cumulative effects assessment, Tyhee would find it helpful for the Review Board to confirm the elements of the natural, social, cultural and economic environments that the board considers to be “Valued Components.”

**N. Closure and Reclamation**

1. Financial Security

Tyhee understands that, during the regulatory phase, the Mackenzie Valley Land and Water Board will determine the financial security that Tyhee will be required to furnish to ensure proper closure and reclamation. Tyhee believes that it is premature to require Tyhee to deal with this aspect of the project as part of the DAR, and therefore requests that Items 2f) and 4) in Section 6.N be deleted from the draft Terms of Reference.

**7. Additional Instructions**

1. Past Environmental Performance

To the extent that records of the “environmental performance” of Tyhee and its contractors to date exist, they are available in the files of the regulatory agencies having jurisdiction, notably Indian and Northern Affairs and the Mackenzie Valley Land and Water Board. Tyhee requests that the Review Board obtain this information from the responsible agencies, and that Item 7g) of Section 7 be deleted from the Terms of Reference.