



Environmental Appeal Board

Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9

Tel: (250) 387-3464

www.eab.gov.bc.ca

Fax: (250) 356-9923

Email: info@bceab.ca

DECISION NO. 2017-EMA-008(a)

In the matter of an appeal under section 100 of the *Environmental Management Act*, S.B.C. 2003, c. 53

BETWEEN:	Christine McLean	APPELLANT
AND:	Director, <i>Environmental Management Act</i>	RESPONDENT
AND:	Mount Polley Mining Corporation	THIRD PARTY
BEFORE:	A Panel of the Environmental Appeal Board Darrell Le Houillier, Chair	
DATE:	Conducted by written submissions concluding on September 24, 2021	
APPEARING:	For the Appellant:	Matthew R. Voell, Counsel
	For the Respondent:	Stephen E. King, Counsel Cory Bargaen, Counsel
	For the Third Party:	Robert M. Lonergan, Counsel Kerry Kaukinen, Counsel

APPLICATION TO AMEND NOTICE OF APPEAL

[1] This decision addresses an application by Christine McLean to amend her Notice of Appeal.

[2] Ms. McLean appealed a decision amending Permit #11678 (the "Permit"), which authorizes Mount Polley Mining Corporation ("MPMC") to discharge effluent into Quesnel Lake from MPMC's copper and gold mine (the "Mine") located southwest of Quesnel Lake. The appealed decision (the "2017 Amendment") was issued on April 7, 2017 by Douglas J. Hill, a Director under the *Environmental Management Act* (the "Director").

[3] The Permit has been amended several times since the 2017 Amendment. Some of the subsequent amendments removed or altered some of the changes that the 2017 Amendment made to the Permit. Some of the subsequent Permit amendments were appealed by Ms. McLean and/or MPMC. Of those appeals, only one filed by MPMC remains active (Appeal No. EAB-EMA-20-A003). Ms. McLean's appeal of the 2017 Amendment, and MPMC's appeal of a subsequent amendment, are being heard separately by the Board.

[4] On July 23, 2021, Ms. McLean applied to amend her Notice of Appeal with respect to the 2017 Amendment. The Director and MPMC object to some of the proposed amendments to her Notice of Appeal.

[5] Ms. McLean's application to amend her Notice of Appeal was heard by way of written submissions.

BACKGROUND

[6] MPMC has operated the Mine and held the Permit since 1997. The Permit was issued under the *Environmental Management Act*, S.B.C. 2003, c. 53 (the "Act").

[7] At the Mine, ore is removed from the ground and then processed to extract gold and copper. When ore is processed, waste is produced including a tailings slurry. The slurry is discharged to a tailings storage facility, where solids settle out from the liquid. The remaining liquid is called supernatant. Some supernatant is re-used in the milling process. Excess supernatant in the tailings storage facility, as well as some water collected at the Mine site, is treated and discharged as effluent.

[8] On August 4, 2014, part of the dam at the Mine's tailings storage facility failed, releasing millions of cubic metres of tailings into Hazeltine Creek and Polley Lake, and subsequently into Quesnel Lake. After the breach, the Mine's operations were suspended for some time. A pollution abatement order was issued under the *Act* to address the impacts of the breach.

[9] Restricted operations recommenced at the Mine in August 2015. On November 29, 2015, the Permit was amended to authorize the temporary discharge of effluent to Quesnel Lake via the channel of Hazeltine Creek, until November 30, 2017. In June 2016, MPMC received authorization under the *Mines Act* and the *Act* to resume full operations at the Mine.

[10] In October 2016, MPMC applied for a Permit amendment. MPMC sought authorization to discharge treated effluent from the Mine to Quesnel Lake for the remaining (pre-closure) life of the Mine. Instead of discharging to Quesnel Lake via Hazeltine Creek, MPMC proposed to convey treated effluent through a pipeline to be constructed from the outlet of the treatment plant to existing diffusers submerged in Quesnel Lake. MPMC intended to rehabilitate Hazeltine Creek. MPMC also sought an increase in the maximum rate and annual volume of effluent discharge, and amendments to certain water quality limits in the Permit. MPMC sought to increase the effluent discharge rate and volume to allow more rapid draw down of mine contact water that was stored in a pit while the tailings storage facility was not operating, and of supernatant in the tailings storage facility during freshet.

2017 Amendment – appealed by Ms. McLean and MPMC

[11] On April 7, 2017, the Director issued the 2017 Amendment, following consultations with the Cariboo Mine Development Review Committee (which includes representatives of local governments, First Nations, and the local

community), the general public, and First Nations. His reasons for issuing the 2017 Amendment were set out in a memorandum dated April 7, 2017.

[12] As amended on April 7, 2017, section 1.2 of the Permit authorized MPMC to continuously discharge "treated effluent from the Site Runoff and Seepage Water Collection Management Systems" directly to Quesnel Lake, subject to certain conditions. The conditions included those in:

- section 1.2.1, which set maximum volumes for daily and year-old average daily discharge to Quesnel Lake;
- section 1.2.2 (iii), which authorizes use of the Quesnel Lake outfall until December 31, 2022;
- section 1.2.3, which set parameters (including biological limits and concentration limits for certain contaminants) for the effluent at the outlet of the treatment plant and at the edge of the "Initial Dilution Zone", a point located 100 metres from the outfall in Quesnel Lake; and
- section 1.2.6, which requires MPMC to immediately cease discharging under section 1.2 if the parameters in section 1.2.3 were not met.

[13] On May 8, 2017, the Board received Ms. McLean's Notice of Appeal regarding the 2017 Amendment. In summary, her Notice of Appeal contained the following:

- under the heading "Background", paragraphs 1 through 8 set out some background information according to Ms. McLean;
- under the heading "The Appellant", paragraphs 9 through 20 set out some information about Ms. McLean's circumstances, including that she owns a property on Quesnel Lake, and why she claims she is aggrieved by the 2017 Amendment;
- under the heading "Reasons for Appeal", paragraphs 21 a. through f. list the reasons why Ms. McLean "submits that the discharge of contaminated effluent directly to Quesnel Lake should not have been permitted"; and
- under the heading "What results are you seeking from an appeal?", paragraphs 1 through 4 state that Ms. McLean was asking the Board:
 1. to set aside the April 7, 2017 amendment of Permit #11678;
 2. in the alternative, to vary Permit #11678 to:
 - a. develop site specific water quality criteria based on the water quality of Quesnel Lake prior to the Mine tailings breach, which will ensure the Lake water quality and aquatic environment are not impacted by the effluent discharge and, at the least, ensure that the characteristics of the discharge at the outlet of the treatment plant meet B.C. Water Quality Guidelines prior to entering Quesnel Lake;
 - b. form a citizens' monitoring committee, which would be involved for the duration of the Amended Permit in obtaining data and/or monitoring

- data from the effluent discharge, with adequate funding provided on a sustained basis by the Ministry or MPMC to hire a coordinator, as well as independent experts to review the information on behalf of locally affected residents;
- c. make all data and reporting available publicly online in a timely manner, not only at the library;
 - d. use BAT [best available technology], including a superior treatment plant that will reduce the contamination entering Quesnel Lake;
 - e. ensure that sufficient research is conducted on the long-term impacts on the Quesnel Lake ecosystem of both the Mine tailings breach and the permitted effluent discharge, to assess whether the permitted effluent discharge is causing incremental adverse effects beyond those caused by the spill; and
 - f. report on whether the 2017 Amendment may result in a change to the trophic state of the lake, and increase algal and other biological growth effects in Quesnel Lake, which can negatively affect water quality and enjoyment of the Lake;
3. to order that Ms. McLean not be required to pay costs in any event of the cause; and
 4. any combination of the above and/or any other remedy the Board considers appropriate.

[14] MPMC also appealed the 2017 Amendment. MPMC objected to sections 1.2.3 and 1.2.6 of the Permit, as amended. However, on October 11, 2018, MPMC advised the Board that a Permit amendment issued on October 2, 2018 addressed the issues in MPMC's appeal of the 2017 Amendment, and MPMC withdrew that appeal.

[15] Ms. McLean's appeal of the 2017 Amendment was scheduled to be heard in May 2019. However, on April 17, 2019, Ms. McLean requested that the Board postpone the hearing. She had learned that MPMC was applying for a further amendment to the Permit, and in her view, the proposed amendments were material to the issues in her appeal of the 2017 Amendment. Additionally, she stated that the proposed amendments were "concerning and would likely be appealed in any event". She proposed adjourning the hearing until a decision was made on MPMC's application to amend the Permit. The Board granted her request for an adjournment.

February 2020 Amendment – appealed by MPMC

[16] On February 1, 2020, the Director issued a further amendment to the Permit (the "February 2020 Amendment"). This amendment included the introduction of a numeric performance metric limit of 12 micrograms per litre for the total concentration of copper at the outlet of the effluent treatment plant, and required MPMC to prepare a new water management plan by December 1, 2020.

[17] MPMC appealed the February 2020 Amendment (Appeal No. EAB-EMA-20-A003). Ms. McLean did not appeal the February 2020 Amendment.

[18] Before MPMC's appeal of the February 2020 amendment was heard, MPMC and the Director agreed to resolve some of the issues in that appeal. Consequently, on September 18, 2020, the Board issued a consent order (the "Consent Order") which further amended the Permit. The Board's Consent Order amended section 2.8.1; amended the opening paragraph of section 2.8.2; deleted section 2.8.2(c); and, amended sections 2.9, 2.10, and 4.2.1(i).

[19] On October 13, 2020, MPMC submitted an amended Notice of Appeal which removed references to the issues and Permit sections that the Consent Order had addressed. MPMC's remaining grounds of appeal pertain to sections 2.8.2(a) and (b) of the Permit, as amended by the February 2020 Amendment. MPMC challenges the imposition of the numeric performance metric limit for the total concentration of copper at the outlet of the treatment plant.

[20] During a pre-hearing conference held on June 23, 2021, all parties agreed that MPMC's appeal of the February 2020 Amendment should be heard separately from Ms. McLean's appeal of the 2017 Amendment. MPMC's appeal of the February 2020 Amendment is being heard by way of written submissions, which are scheduled to close on October 28, 2021.

December 2020 Amendment – appealed by Ms. McLean

[21] Meanwhile, on December 31, 2020, the Director issued an updated version of the Permit (the "December 2020 Amendment"), which reflected the terms of the Consent Order and updated the names of two First Nations.

[22] During a pre-hearing conference held on January 12, 2021, regarding the appeal of the 2017 Amendment, and in a follow-up letter dated January 13, 2021, the Board requested that Ms. McLean clarify the scope of her appeal of the 2017 Amendment, given the amendments to the Permit since that appeal was filed.

[23] On January 28, 2021, Ms. McLean appealed the December 2020 Amendment.

[24] In a letter dated January 29, 2021, Ms. McLean notified the Board that she did not intend to amend her Notice of Appeal with respect to the 2017 Amendment or otherwise alter the particulars of that Notice of Appeal, in response to the Permit amendments made since the 2017 Amendment. However, she advised that she would be applying to join that appeal with her appeal of the December 2020 Amendment.

[25] During a pre-hearing conference held on February 2, 2021, the Director and MPMC raised concerns about whether the December 2020 Amendment was an appealable decision. Accordingly, in a letter dated February 11, 2021, the Board asked the parties to provide submissions on whether the December 2021 Amendment was an appealable decision, and if not, whether it should be summarily dismissed.

[26] On May 6, 2021, the Board summarily dismissed Ms. McLean's appeal of the December 2020 Amendment (Decision No. EAB-EMA-21-A002(a)). Among other things, the Board found that the December 2020 Amendment did not contain a substantive decision by the Director, and the Board had no jurisdiction over the appeal.

Ms. Mclean's application to amend her Notice of Appeal re: 2017 Amendment

[27] On May 17, 2021, the Board sent a letter to the parties to follow-up on its request for clarification regarding what issues remained in Ms. McLean's appeal of the 2017 Amendment.

[28] On July 23, 2021, Ms. McLean applied to amend her Notice of Appeal. On August 24, 2021, the Board received Ms. McLean's written submissions in support of the application to amend her Notice of Appeal. She anticipated objections from the other parties on the three grounds, which I have summarized as:

- that the facts relevant to the appeal will be those in place at the time her appeal was filed;
- that her proposed changes to the Notice of Appeal relate to time periods after the 2017 Amendment that is the subject of this appeal; and
- that her proposed changes to the Notice of Appeal constitute "expansions" of the appeal that are improper at this stage of the proceedings.

[29] To assist the Board and the parties, Ms. McLean's submissions include a copy of the proposed amended Notice of Appeal in which the changes are indicated by different coloured text (as Schedule A), and a copy of the proposed amended Notice of Appeal in which the objections of the Director and MPMC are highlighted (as Schedule B). I have summarized her proposed changes to the Notice of Appeal as follows:

- under the heading "Background", amending paragraphs 2, 5, and 6, and adding new paragraphs 7, 8, 9, and 10 (with original paragraph 7 becoming paragraph 11);
- under the heading "The Appellant", amending paragraphs 8 through 11 and 13 through 20 (all paragraphs under this heading would be renumbered, becoming paragraphs 12 through 24);
- under the heading "Reasons for Appeal", amending paragraphs 21 a. through c. and e. through f. (and renumbering them as paragraphs 25 a. through f.);
- under the heading "What results are you seeking from an appeal?", amending paragraphs 1 and 2 a., b., e. and f. (and renumbering as paragraphs 2 a. i. through 2 a. vi.), adding a new paragraph 2 b., adding a new paragraph 3, and renumbering paragraphs 3 and 4 as paragraphs 4 and 5.

[30] The proposed changes are included as an appendix to this decision.

[31] On September 17, 2021, the Board received written response submissions from the Director and MPMC.

[32] The Director and/or MPMC object to the following proposed amendments:

- under the heading “Background”, new paragraphs 7, 8, 9, and 10;
- under the heading “The Appellant”, amending paragraphs 9, 10, 13, 14, 15, and 18 (i.e., renumbered paragraphs 13, 14, 17, 18, 19 and 22);
- under the heading “Reasons for Appeal”, some of the amendments to paragraphs 21 e. and f. (i.e., renumbered paragraphs 25 e. and f.);
- under the heading “What results are you seeking from an appeal?”, amending 2 a., b., e. and f. (renumbered paragraphs 2 a. i., ii., and v.), adding a new paragraph 2 b., and adding a new paragraph 3.

[33] Ms. McLean filed no final reply submissions by the deadline of September 24, 2021.

ISSUE

[34] The issue to be decided in this preliminary decision is: should Ms. McLean’s application to amend her Notice of Appeal be granted?

DISCUSSION AND ANALYSIS

Should Ms. McLean’s application to amend her Notice of Appeal be granted?

Summary of Ms. McLean’s submissions

[35] Ms. McLean submits that she appealed the Director’s decision to issue an amended Permit on April 7, 2017. Pursuant to the express terms of the Permit, as amended on that date, it was the only version of the Permit in force as of that date. Ms. McLean submits that when the Director amends, repeals, and replaces the Permit, or issues an amended Permit that supersedes a prior version of the Permit, it is the new or amended Permit that is in force from that time forward. She says her May 8, 2017 Notice of Appeal sought two categories of relief:

- a. to set aside the Permit, as amended on April 7, 2017; and
- b. in the alternative, to vary the Permit, as amended on April 7, 2017, to require MPMC to take various steps including making data available, using Best Available Technology, etc. (the “Additional Requirements”).

[36] Thus, Ms. McLean argues, when this appeal is heard, the Board must consider the Permit as it exists at that time. Ms. McLean says, “The Board panel [that hears the appeal] will not only consider the April 2017 Amended Permit ...”, before it was subsequently amended. Ms. McLean argues, therefore, that despite those subsequent amendments:

- a. if Ms. McLean succeeds in having the Board setting aside the April 2017 version of the Permit, the Permit as it exists at the time of the Board decision will be set aside, notwithstanding any subsequent amendments; and
- b. if Ms. McLean's alternative arguments are accepted by the Board, the terms that the Board adds to the Permit would apply on a prospective basis, and not merely from April 2017 until present.

[37] In addition, Ms. McLean notes that that the Board may conduct the appeal as a *de novo* or new hearing of the matter pursuant to section 102(2) of the *Act*, and she may ask the Board to rely on evidence that was not before the Director when he decided to amend the Permit in April 2017. Ms. McLean maintains that the Board has previously held that "[e]vidence of facts that have arisen since the appealed decision was made, and since the initial hearing occurred, may be material to the Panel in deciding on an appropriate disposition of this appeal" (*Houweling Nurseries Ltd. v Greater Vancouver (Regional District)*, 2007 CarswellBC 77, [2007] B.C.W.L.D. 1274), at para. 42.

[38] Ms. McLean says that, in objecting to the proposed amendments to her Notice of Appeal, the Director and/or MPMC are attempting at an interlocutory stage to place limits on the nature and scope of the appeal and the evidence to be considered by the Board panel hearing the appeal. Accepting their objections at this point would constrain or fetter the ability of the Board panel hearing the appeal to consider and accept relevant evidence. She submits that she should be allowed to amend her Notice of Appeal, and it should be left to the Board panel that hears the appeal to decide what facts and evidence it considers to be relevant and what relief it wishes to grant.

[39] With respect to the objections to specific aspects of the proposed amended Notice of Appeal, Ms. McLean submits as follows:

- new paragraph 7: The revisions simply attempt to use defined terms to refer to the Permit as it was amended in April 2017. The basis for the objections is unclear.
- new paragraphs 8 through 10: These proposed paragraphs refer to Permit amendments that occurred in 2018 and 2020, and allege that MPMC failed to comply with or meet many of the deadlines imposed under both the 2017 Amendment and the subsequent amendments to the Permit. Ms. McLean is entitled to ask the Board to rely on evidence that was not before the Director on April 7, 2017. It is open to the panel hearing the appeal to decide what evidence it considers to be relevant.
- amendments to paragraphs 9 and 10 (renumbered as 13 and 14): The proposed amendments merely set out Ms. McLean's changed circumstances since the appeal was filed. It is open to the panel hearing the appeal to decide whether these facts are relevant. Denying their inclusion in the Notice of Appeal at this stage would limit the Board's future discretion to consider these facts.

- amendments to paragraphs 13 to 15, 18 and 21(e) (renumbered as 17 to 19, 22 and 25(e)): The proposed changes are attempts to consistently use defined terms to refer to the Permit as amended in April 2017, and to provide for Ms. McLean's changed circumstances since the appeal was filed. The basis for the objections is unclear.
- amendments to paragraph 21(f) (renumbered as 25(f)): The proposed amendments include adding the phrase "as required to participate in such monitoring and oversight" after the noun "independent experts". The current scope of the appeal includes the stated desire for more public participation and resourcing to enable affected residents to hire independent experts. This general desire necessarily includes the narrower and more specific desire of enabling affected residents to hire independent experts "as required to participate in such monitoring and oversight". Insofar as this phrase narrows the scope of the appeal or the stated reason for appeal, it is unclear how this is objectionable.
- Relief Sought – paragraphs 2 a. i.: The current Notice of Appeal (at paragraph 2(a)) asks the Board to vary the Permit to require MPMC to develop site specific water quality criteria that are consistent with the water quality of Quesnel Lake prior to the mine tailings breach, and at the very least, to ensure that the characteristics of the discharge at the outlet of the treatment plant meets the BC Water Quality Guidelines. The new proposed paragraph 2(a)(i) merely reverses the order of these requests, and refers to the citizens' monitoring committee which is defined in the current Notice of Appeal. This amendment amounts to a reordering of the relief sought. There is nothing new of substance in this proposed revision.
- Relief Sought – paragraphs 2 a. ii.: The Notice of Appeal currently requests that the Board vary the Permit to require MPMC to form a citizens' monitoring committee. The proposed amended relief includes a request that the Board require MPMC to fund such committee. Section 103(c) of the *Act* provides that, in deciding an appeal, the Board may "make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances." The *Act* does not limit the Board's authority to the remedies expressly requested in the Notice of Appeal, and thus, even without this amendment, the Board may impose such a requirement on MPMC if the Board considers it appropriate in the circumstances. The additional language in paragraph 2(a)(ii) merely allows the parties to make submissions to the Board on the issue of funding the requested citizens' monitoring committee.
- Relief Sought – paragraphs 2 a. v.: The current Notice of Appeal (paragraph 2 e.) asks the Board to vary the Permit to "ensure that sufficient research is conducted on the long-term impacts on the Quesnel Lake ecosystem of both the Mine tailings breach and the permitted effluent discharge to allow a determination of whether the permitted effluent discharge is causing incremental adverse effects over and above those caused by the spill." The

proposed amended paragraph 2 a. v. asks the Board to require that such research be done in consultation with the proposed citizens' monitoring committee. Such an amendment is not materially different than the current version; it connects this head of relief to the previously listed request for a term requiring a citizens' monitoring committee. It is open to the Board to impose such a requirement regardless of whether the terms of the committee are set out in the Notice of Appeal, and this proposed amendment should not be objectionable.

- Relief Sought – paragraph 2 b.: This proposed new alternate relief (if the Permit is not set aside) states “that if the permittee does not fulfill its reporting requirements under the Permit, ... by any timelines specified ..., the permittee will not be authorized to exercise any of its rights to discharge treated effluent from the site runoff and seepage water collection and management systems to Quesnel Lake, ... until the Director determines that such outstanding reporting requirements are fulfilled in compliance with the applicable sections of the Permit.” In this appeal, Ms. McLean alleges that MPMC has failed to comply with the terms of the Permit since April 2017. Insofar as these facts, which post-date the 2017 Amendment, can be considered by the Board in fashioning a remedy, it has the jurisdiction to vary the Permit to impose conditions relating to future breaches of the Permit. This proposed additional term is intricately tied to the subject of the current appeal, and its inclusion in the Notice of Appeal would not prejudice the Director or MPMC.
- Relief Sought – paragraph 3: This proposed new relief seeks an order, in the further alternative, vacating the 2017 Amendment and remitting the matter back to the Director with directions. This relief is available to the panel hearing the appeal, regardless of whether it is included in the Notice of Appeal. This proposed amendment merely notifies the Director and MPMC of this possibility and allows the parties to speak to it at the appeal hearing.

Summary of the Director's submissions

[40] The Director characterizes his objections to Ms. McLean's application as, broadly speaking, based on relevance, mootness, or the Board lacking jurisdiction to grant relief sought.

[41] The Director submits that, in deciding an application to amend a Notice of Appeal, the Board must first consider the relevant statutory provisions. Next, according to the Board's past decisions in *Cobble Hill Holdings Ltd. v. Director, Environmental Management Act* (Decision Nos. 2013-EMA-017(a), 019(a), 020(a), and 021(a)) [*Cobble Hill*], at para. 44, and *Stannus v. British Columbia (Ministry of Environment)*, 2018 B.C.E.A. No. 11 [*Stannus*], at para. 106, there are two separate but related questions the Board may need to consider:

- a. whether it is plain and obvious that the Board has no jurisdiction over the impugned ground of appeal, or whether the ground is completely irrelevant to the subject of the appeal; and
- b. whether the remedy sought with respect to the ground for appeal is within the Board's jurisdiction.

[42] In considering this type of application, the Director says it is important to keep in mind that only the portions of a permit that are altered by a decision of a director are properly the subject of an appeal. An appeal does not open up the entirety of a permit to scrutiny or alteration: *Unifor Local 2301 v. Rio Tinto Alcan Inc.*, 2017 BCCA 300 [*Unifor*], at para. 40. The Director submits that the Board has no jurisdiction to reconsider the portions of the Permit which were not altered by the amendments in the appealed decision.

[43] The Director maintains that the Board's jurisdiction in the appeal of the 2017 Amendment is limited to considering the specific amendments made in that April 7, 2017 decision. After that date, further amendments were made that Ms. McLean did not appeal. Although she appealed the December 2020 Amendment, that appeal was dismissed by the Board. Some of the subsequent amendments removed or altered some of the changes made in the 2017 Amendment. Through the passage of time and further amendments to the Permit, some of the potential grounds for appealing the 2017 Amendment are now moot. For example, the circumstances surrounding sections 2.8 through 2.10 of the Permit as contained in the 2017 Amendment¹ were operable for specific timeframes which were exhausted some time ago, and those sections have been replaced with other Permit conditions.

[44] The Director submits that Ms. McLean is attempting to expand her appeal of the 2017 Amendment into areas which are irrelevant to the specific amendments made on April 7, 2017. Alterations made to the Permit after that date are not permissible grounds for this appeal. In that regard, the Director notes the Board's findings in para. 75 of Decision No. EAB-EMA-21-A002(a):

Lastly, I recognize that the effect of this decision is to deny Ms. McLean the ability to appeal the contents of the Consent Order to the Board, even if it affects some aspects of the April 2017 Amendment, which Ms. McLean had appealed. This is, however, a function of section 17 of the ATA. Section 17 contemplates that the Board must allow a withdrawal of an appeal, in whole or in part, where the parties advise the Board that they have settled part or all of an appeal. Similarly, under section 16 of the ATA, the Board may issue a consent order at the request of the parties, if the terms of the settlement

¹ These sections of the Permit in effect on April 7, 2017 included requirements for MPMC to: develop a final water management plan before December 1, 2019; submit a final assessment report on refining and implementing an improved copper removal process and implement the recommended measures by specified dates in 2017; and, submit plans and 'as built' drawings for bio-chemical reactor bench scale testing and piloting by specified dates in 2017.

are consistent with the enactments governing the appeal (the *Act*, in this case). If Ms. McLean wanted some control over the settlement terms arising from MPMC's appeal of the February 2020 Amendment, she should have appealed that version of the Permit or applied to be granted full-party participant status. She chose not to do any of these. As a result, the process has not been unfair to her and she cannot now seek to exert control over the terms of the settlement agreement, now incorporated in the December 2020 Amendment.

[underlining added in the Director's submissions]

[45] The Director submits that further Permit amendments during the four years after the 2017 Amendment have altered the substantive framework of the Permit. Despite being on notice of those proposed Permit amendments, Ms. McLean did not seek a stay related to her appeal of the 2017 Amendment and did not appeal those further amendments.

[46] The Director acknowledges that the Board may conduct an appeal as a *de novo* hearing, but the Director says a *de novo* hearing process does not allow irrelevant evidence to be tendered and does not expand the Board's jurisdiction or the potential breadth of a decision that the Board could make.

[47] The Director's specific objections to the amendments sought in the application are as follows:

- new paragraph 7: the word "made" should not be used in this paragraph. It is clear on the face of the Permit, as amended in April 2017, that authorization for the discharge is temporary and has an end date of December 31, 2022. Including the word "made" does not reflect the language in the amended Permit under appeal.
- new paragraphs 8 through 10: the proposed amendments are irrelevant, and do not relate to the 2017 Amendment. In this appeal, the Board will assess whether the Permit amendments made on the April 7, 2017, compared to previous versions of the Permit, are consistent with the Director's obligations in the *Act*. That assessment is not driven by considerations of potential or actual future non-compliance with the Permit.
- Relief Sought – paragraphs 2 a. i, ii, and v.: the additional remedies sought are not within the Board's jurisdiction to grant. For example, regarding proposed paragraph 2 a. ii., the Board has no jurisdiction to order the formation of a citizens' monitoring committee, as this would create legal obligations on a party that is not part of the appeal. Moreover, the Board has no jurisdiction to order that such a committee be adequately funded on a sustained basis by MPMC, or that it will be enabled to hire a coordinator and independent experts to review information.
- Relief Sought – paragraph 2 b.: the relief sought is completely unrelated to the 2017 Amendment. In making the 2017 Amendment, there would have been no basis for the Director to impose the condition sought at paragraph

2(b). The relief sought would fetter the decision-maker's ability to manage and mitigate risks associated with the permitted discharge. Further, the Director has various forms of recourse in the Permit and the *Act* to address potential non-compliance with reporting and/or other permit conditions.

- Relief Sought – paragraph 3: the relief sought is unnecessary. No additional relief is sought in paragraph 3, beyond restating a plea for the relief sought at paragraph 2. The Director objects to adding paragraph 3 because it contemplates the Board remitting the matter back to the Director with directions incorporating the requirements in paragraph 2 of the relief sought. Various portions of the relief sought in paragraph 2 are impermissible, for the reasons provided above, and should not be referenced in paragraph 3.

[48] The Director also raises concerns about the degree to which Ms. McLean has provided particulars (the material facts that she says are true and that she will seek to prove in her appeal) in her pleadings. The Director likewise argues that some of the terms of the 2017 Amendment that Ms. McLean has appealed are protective of the environment and, if struck from the Permit, the environment would not be as well-protected. I note, however, that this preliminary decision relates to Ms. McLean's application to amend her Notice of Appeal; it is not to consider whether she has provided sufficient particulars or portions of her appeal of the 2017 Amendment should be struck or otherwise altered.

Summary of MPMC's submissions

[49] MPMC opposes the application. MPMC submits that the application seeks to expand the scope of the appeal to challenge other decisions that were made before and after the decision under appeal; it is not the Permit that is under appeal, but rather the April 2017 decision to amend certain portions of it. MPMC says that the period for appealing other decisions related to the Permit has expired. MPMC argues that Ms. McLean had to file a new appeal if she wished to challenge a subsequent decision. She did not do so, and it would be an abuse of process to allow her to do so now. The Board made this clear in para. 82 of Decision No. EAB-EMA-21-A002(a):

To the extent that Ms. McLean's appeal of the December 2020 Amendment seeks to challenge aspects of the Permit that were unchanged from the February 2020 Amendment, I find that this would be an abuse of process, because she had the opportunity to appeal the February 2020 Amendment, but she did not, and the 30-day appeal period in section 101 of the *Act* expired months ago.

[50] MPMC says disallowing the proposed amendments would not "constrain and/or fetter the discretion of the panel that will hear the appeal" or "place limits on the nature and scope of the appeal and evidence to be considered by the Board" as submitted by Ms. McLean. The Board's jurisdiction in section 103 of the *Act* remains intact with respect to the decision being appealed. A threshold issue in deciding whether to grant an application to add a new ground for appeal is whether

the ground is within the Board's jurisdiction: *Stannus*, at para. 210. Nothing in section 103 suggests that the Board is empowered to make a decision about previous or subsequent decisions that are not the subject of the appeal.

[51] MPMC also says the Board's authority to conduct a hearing *de novo* has no bearing on whether the requested amendments should be allowed. The Board's power to proceed *de novo* allows it to reconsider the appealed decision, *de novo*. It does not give the Board the power to reconsider a different decision that has not been appealed.

[52] Further, MPMC submits that the application seeks to put in issue conduct characterized as "non-compliance", which occurred after April 2017, as somehow relevant to the question of whether the 2017 Amendment was lawful. MPMC acknowledges that the Board has found that it may admit evidence that was not before the person who made the appealed decision: *Houweling Nurseries Ltd. v. British Columbia (Ministry of Environment)*, [2007] B.C.E.A. No. 4. Although the Board has found that evidence of subsequent facts may be material, MPMC submits that those facts must still be relevant to the issues on appeal. The Board does not have the authority to amend pleadings in order to receive evidence; rather, the scope of evidence is determined by reference to the pleadings. Although the Board has broad discretion to admit evidence, the first consideration in determining what evidence to admit is whether the evidence is relevant: *GFL Environmental Inc. v. British Columbia (Ministry of Environment)*, [2019] B.C.E.A. No. 8, at paras. 44-45.

[53] MPMC maintains that allowing Ms. McLean to expand her appeal in the manner she seeks would add length and complexity to the hearing, and would be prejudicial to MPMC. MPMC says that before that hearing was adjourned in 2019, Parties had exchanged multiple expert reports and were at an advanced stage of preparation. The requested amendments would add a significant number of new issues to the appeal, and would add facts that are entirely disconnected from the appealed decision. The addition of irrelevant facts and documents would not aid the Board in deciding the issues in the appeal and would be improper. It would add complexity and length to the hearing, and would be prejudicial to MPMC, who would have to marshal a substantial amount of new evidence and likely expert opinion evidence.

[54] MPMC's specific objections to the amendments sought in the application are as follows:

- new paragraph 7: The change of wording from "essentially makes" to "made" is not simply using defined terms; rather, it is a new assertion regarding the permitted timeframe for discharge of effluent into Quesnel Lake. The 2017 Amendment did not make the previous temporary authorization for discharge permanent. The Permit states at section 1.2(iii), "Use of the Quesnel Lake outfall is authorized until December 31, 2022."
- new paragraphs 8 through 10: These paragraphs are not relevant to the issues in this appeal. They relate to time periods long after the appealed decision, regarding compliance with the Permit. They appear to be connected

to the proposed amendment at "Relief Sought", paragraph 2(b), which is also objectionable. Ongoing compliance with the Permit is not a decision that Ms. McLean may appeal. Expanding the appeal to include issues around compliance would be improper and would require a substantial body of evidence that is irrelevant to the appeal.

- new paragraphs 13 and 14: The proposed "updates" appear to relate only to Ms. McLean's standing to bring this appeal. Section 100 of the *Act* sets out who has standing to file an appeal, and section 100 explicitly ties the issue of standing to the limitation period at section 101 of *Act*, with the inclusion of "in accordance with this Division".
- new paragraph 17: The last sentence of the proposed amendment contains a new assertion. To the extent that this is added to provide for Ms. McLean's "changed circumstances", such amendments are unnecessary for the reasons stated above regarding the proposed amendments to paragraphs 13 and 14.
- new paragraphs 18: The proposed amendment contains a new assertion regarding "aquatic life" which should have been made when the appeal was filed. This is not merely an attempt to use defined terms or an update of circumstances since the appeal was filed.
- new paragraphs 19 and 25(e): The addition of the phrase "including the April 2017 Amendment" to the proposed amendment at paragraphs 19 and 25(e) is an expansion of the appeal, and not merely the use of a defined term. Including this phrase implies that the 2017 Amendment is only one of the authorizations that Ms. McLean is concerned about. It would be an abuse of process to allow her to make assertions about the "Permit" outside of the amendments made in 2017.
- new paragraph 22: The proposed amendments appear to be an expansion of the appeal, as they appear to go beyond the amendments made in 2017.
- new paragraph 25(f): The proposed amendments in the last sentence of paragraph 25(f), are not a narrowing of the appeal, as Ms. McLean claims. The amendments appear to suggest that residents ought to have independent experts who will participate in monitoring and oversight. Participation by experts in monitoring and oversight is a new fact or assertion which should have been made when the appeal was filed.
- Relief Sought – paragraphs 2 a. i, ii, and v.: These proposed amendments contain an expansion of the relief sought from the original appeal including monitoring and oversight by the citizens' monitoring committee. There is no basis to require monitoring and oversight by the citizens' monitoring committee and no basis to expand the relief sought in this manner. Specifically, the proposed amendment at paragraph 2(a)(i) seeks to add a new condition to the Permit and adds a requirement for water quality criteria to be developed through consultation with the citizens' monitoring committee. This is not just a reversal of the order of the relief sought from the original notice of appeal; it is an expansion of that relief. The proposed

amendment at paragraph 2(a)(ii) seeks to have MPMC fund the citizen's monitoring committee, but there is no basis to require this of MPMC. The proposed amendment at paragraph 2(a)(v) seeks to impose a new requirement "through consultations with the citizens' monitoring committee", which is materially different than the current Relief Sought in that paragraph.

- Relief Sought – paragraph 2 b.: The proposed amendment is an entirely new request for relief related to MPMC's compliance with the Permit after the 2017 Amendment. Compliance with the Permit was unrelated to the decision to issue the amendments in 2017. Ms. McLean has no standing to appeal MPMC's compliance with the Permit. The issue of compliance would require substantial additional evidence and hearing time. It would be prejudicial to MPMC to require it to marshal evidence and potentially file expert reports related to the issue of Permit compliance.
- Relief Sought – paragraph 3: This proposed amendment is an entirely new request for relief and it encompasses the other amendments to the proposed "Relief Sought" paragraphs which MPMC objects to, as set out above.

The Panel's findings

[55] In the reasons that follow, I address in detail the proposed amendments that are the subject of objections by the Director or MPMC. The proposed amendments that the Director or MPMC did not expressly object to are allowed.

[56] Although the Board's past decisions are not binding on me, I find that the decisions in *Stannus, Cobble Hill*, and *Joan Sell et al v. Assistant Regional Waste Manager* (Decision Nos. 2000-WAS-028(a) and 2000- WAS-031(a), issued May 11, 2001) (which the Board relied on in *Cobble Hill*) provide helpful guidance regarding the test to be applied in deciding this application.

[57] Consistent with those decisions, the first question with respect to an application to add or amend grounds of appeal is whether it is plain and obvious, on a generous reading of the proposed amended or new ground of appeal, that the Board has no jurisdiction over the amended or new ground, or that the proposed amended or new ground is completely irrelevant to the subject matter of the appeal. The threshold for denying such an application at a preliminary stage in the appeal process must be generous, to ensure that appellants have an opportunity to be heard on matters that are within the Board's jurisdiction.

[58] In addition, even if the proposed amended or new ground for appeal is, on a generous reading, within the Board's jurisdiction, the other parties' right to procedural fairness should also be considered in deciding the application. For example, an application to add new grounds for appeal may be allowed if the other parties to the appeal receive adequate notice of any material changes to the grounds for appeal. Another consideration is whether allowing the amended or new ground of appeal adds to the complexity of the appeal or the length of the hearing. Any potential prejudice to the other parties should be balanced against an appellant's right to a fair opportunity to be heard.

[59] Similar considerations apply with respect to an application to add new or amended remedies to a Notice of Appeal.

[60] With those principles in mind, I make the following general findings with respect to Ms. McLean's application to amend her Notice of Appeal.

[61] To the extent that Ms. McLean may, in effect, be attempting to challenge decisions made with respect to the Permit before or since the 2017 Amendment, I find that she has no standing to appeal such decisions. Section 101 of the *Act* provides a 30-day appeal period, and the Board has no jurisdiction to extend that appeal period. If Ms. McLean is aggrieved by any Permit amendments issued before or after the 2017 Amendment, she should have appealed those decisions within the 30-day appeal period. She cannot attempt to challenge those decisions through her appeal of the 2017 Amendment.

[62] Furthermore, to the extent that Ms. McLean may be attempting to appeal the entirety of the Permit, this is not permissible. The Court of the Appeal stated in para. 40 of *Unifor* that an appeal of a decision to amend a permit "does not lay an existing permit open to attacks at large. The appeal must be narrowly focused on the particular impugned decision." In the present case, a consolidated version of the Permit was issued on April 7, 2017 which combined the amendments made on April 7, 2017 with the unchanged text of the Permit that existed immediately before April 7, 2017. As the Board found in Decision No. EAB-EMA-21-A002(a), a consolidated copy of a permit serves administrative purposes only, and does not represent a repeal and replacement of the entire permit. If the entire contents of a consolidated permit were open to appeal, it would result in new opportunity to appeal past decisions after the statutory appeal period has expired. For example, if the consolidated Permit issued on April 7, 2017 could be appealed in its entirety, it would mean the amendments made on November 29, 2015 would be open to appeal twice: first, within 30 days of November 29, 2015; and again, within 30 days of April 7, 2017. This would be contrary to the 30-day appeal period in section 101 of the *Act*. This result runs counter to the overall scheme of the *Act* by rendering meaningless the deadline to appeal under section 101. Thus, I find that the appeal of the 2017 Amendment is limited to the changes made to the Permit on April 7, 2017.

[63] At the same time, it is important to keep in mind that information available both before and since the 2017 Amendment may be considered by the Board in deciding the appeal of the 2017 Amendment. Under section 102(2) of the *Act*, the Board may conduct an appeal as a new hearing of the matter. Also, under section 40 of the *Administrative Tribunals Act*², the Board has broad discretion to receive and accept information as long as it is "relevant, necessary and appropriate" and not subject to a form of legal privilege. Thus, in deciding this appeal, the Board may consider new information that became available after the 2017 Amendment was

² Under section 93.1 of the *Act*, certain sections of the *Administrative Tribunals Act* apply to the Board, including section 40.

made, if the information is relevant to the issues in the appeal. Potentially, this may include information about subsequent Permit amendments and MPMC's compliance with the Permit. However, it is ultimately up to the Board panel who hears the appeal to decide what information and evidence is relevant for the purpose of deciding the issues in this appeal. In terms of relevance, the threshold for allowing a preliminary application to amend a Notice of Appeal is generous, and is not necessarily the same threshold that will be applied by the panel that decides the merits of the appeal. A preliminary decision to allow a new or amended ground of appeal or remedy to be added to a Notice of appeal does not bind or restrict the decision-making of the panel that hears the merits of the appeal, but it does provide the other parties with advance notice that an appellant intends to make submissions and potentially tender evidence in support of those grounds of appeal or remedies, to which the other parties may wish to respond.

[64] Turning to the specific requests in Ms. McLean's application, I find that the proposed amendments under the headings "Background" and "The Appellant" are neither proposed new or amended grounds for appeal, nor proposed remedies. These proposed amendments appear to be statements and assertions of fact by Ms. McLean. For example, the proposed amendments under the heading "Background" include some new information about the content or effects of the 2017 Amendment (some of which is inaccurate, according to the other parties), and several new paragraphs about events that occurred after the 2017 Amendment was issued (which the other parties say are irrelevant). Similarly, the proposed amendments under the heading "The Appellant" set out some new information about Ms. McLean's circumstances and her concerns about the discharge of effluent from the Mine to Quesnel Lake (some of which is irrelevant, according to the other parties).

[65] I note that many of the proposed amendments under the headings "Background" and "The Appellant" (and all of the pre-existing paragraphs under those headings) are not disputed by the Director and MPMC. For example, they do not challenge Ms. McLean's assertion that she owns property on Quesnel Lake and holds water licence authorizing her to divert and use water from Quesnel Lake, and they have not challenged her standing to appeal the 2017 Amendment as a person aggrieved by that decision. However, to the extent that the asserted facts and statements in these proposed amendments may or may not be accurate or relevant to the issues in the appeal, I find that the panel who hears the merits of the appeal will ultimately make that determination, after hearing the full evidence and submissions of all parties.

[66] Having discussed the general principles involved, I turn to the specific requests made by Ms. McLean and the objections of the other parties.

[67] I grant the Ms. McLean's request to amend her Notice of Appeal, as it pertains to paragraphs 2, 5, 6, 11, 12, 15, 20, 21, and 23 to 25(d) as amended. These changes were all unopposed and I see insufficient reason to deny the application in respect of those changes.

[68] I also grant Ms. McLean's request to amend paragraph 7. While the Director and MPMC argue that it contains incorrect information, pleadings do not need to be perfect. They are intended only to show the structure of the argument to be made and the evidence to be presented in the hearing. The other parties will have ample opportunity to respond, and the panel assigned to decide the hearing will be able to determine what the 2017 Amendment says.

[69] I also grant Ms. McLean's request to add paragraphs 8 to 10 and 13 to 14 of her Notice of Appeal. While the other parties have argued that it contains irrelevant information, I am not satisfied that the additional material should not form part of Ms. McLean's pleadings. This is particularly so, given the generous stance I must take to ensure she has a fair opportunity to make her case in the appeal. I am not satisfied that the information contained in these paragraphs is necessarily irrelevant, given the Board's ability to consider new evidence that was not before the original decision-maker, and which arose since the original decision was made. In particular, I note that the compliance history of MPMC may be relevant, as may background information which describes the ties that Ms. McLean and her family have to Quesnel Lake.³

[70] I grant Ms. McLean's request to amend paragraph 17 of the Notice of Appeal. While MPMC argues that this amendment amounts to a new assertion that ought to have been included in Ms. McLean's pleadings initially, it includes two minor changes: one corrects a grammatical issue, and the other states that Ms. McLean and her family are concerned about the impacts the tailing breach may have on the fishing they do in Quesnel Lake. As discussed below, I find that the latter simply adds details about a ground of appeal that was provided in her original Notice of Appeal.

[71] Ms. McLean's existing, unamended Notice of Appeal, says, at paragraph 14, "Ms. McLean is concerned about the contamination of Quesnel Lake by effluent that the Amendment authorizes to be discharged and that will affect the Lake's water and fish." This already expresses that Ms. McLean is concerned about fish health as a result of potential water quality issues related to the 2017 Amendment. That her concern relates to fishing she and her family does is an added level of detail that does not need to be included in the Notice of Appeal. The existent Notice of Appeal is enough to describe, with respect to fish health, "a description of what is wrong with the decision and why it should be changed (the grounds for appeal and particulars)".⁴ However, this is the minimum standard required, and the Appellant

³ I do not agree with MPMC that the information in paragraphs 13 to 14 necessarily relate to a question of standing. Although this information may have been relevant to that issue, it may also be useful in describing the manner in which Ms. McLean uses and enjoys Quesnel Lake.

⁴ See page 13 of the Board's *Practice and Procedure Manual*, which explains the wording contained in the Board's Form 1 (Notice of Appeal). The Form 1 is referenced as a suitable form for a Notice of Appeal in the Board's Rule 5.

is not precluded from providing additional detail. I accordingly grant her request to amend paragraph 14.

[72] Ms. McLean also requests to amend paragraphs 18, 19, and 22. The essential character of these amendments is to expand on Ms. McLean's stated concern about impacts to Quesnel Lake's water and fish, from the effluent authorized in the 2017 Amendment, to effluent "... authorized under the Permit, including under the April 2017 Amendment ..."⁵ In both versions of the Permit, the concern about effluent release extends to a concern over cumulative impacts to the lake system, given the 2014 mine tailings release. I agree with MPMC that this represents an expansion of this professed concern.

[73] That said, the expanded nature of the concern does not confer any additional jurisdiction upon the Board. The decision under appeal remains the 2017 Amendment. That Ms. McLean is concerned about the effluent authorized under the Permit as amended in 2017 and, possibly, other effluent otherwise authorized under the Permit, does not grant the Board any authority to change the Permit, aside from the 2017 Amendment. It may be that Ms. McLean is concerned about the effluent authorized in the 2017 Amendment given pre-existing water quality issues (including, but not limited to, the mine tailings release in 2014). It may be that she is concerned not only about the effluent authorized by the 2017 Amendment, but also the manner in which it interacts with effluent authorized otherwise in the Permit. Either could lead to legitimate arguments on appeal, related to the effluent authorized under the 2017 Amendment. It is not clear that the expanded concern in paragraphs 18 and 19 is impermissible or improper, and as a result, I grant the Appellant's request with respect to paragraphs 18, 19, and 22.

[74] The same rationale applies to the proposed amendment of paragraph 25(e), insofar as it raises the issue of "... effluent discharge authorized under the Permit, including the April 2017 Amendment ..." and "... ongoing authorized effluent discharge." Ms. McLean's position may relate to the cumulative impacts of more than one source of effluent, or effluent and some historical water quality issue, or both. This is permissible for her to do in the context of her appeal.

[75] The other aspects of the proposed amendment of paragraph 25(e) are less controversial. Both the existent and the proposed versions of paragraph 25(e) assert that MPMC should not be allowed to discharge any effluent to Quesnel Lake until the long-term effects of the 2014 mine tailings release are "fully understood." Beyond the expanded consideration of the effluent authorized under the Permit, and not just the April 2017 Amendment, the proposed new wording also specifies that it is only MPMC's mining effluent at issue, clarifies some wording, and indicates that the mine tailings breach underlying the concern occurred in 2014. None of these details are controversial or inappropriate.

⁵ This was the wording in the proposed amendments of paragraphs 18 and 19. The wording in paragraph 22 similarly describes "... the effluent discharge authorized under the Permit (including the amendments thereto)."

[76] The Board could read down both versions of paragraph 25(e), just as it did in similar circumstances in *Revolution Organics, Limited Partnership v. Director, Environmental Management Act* (Decision no. 2017-EMA-012(a), September 27, 2017), to pertain only to the 2017 Amendment that is under appeal. Accordingly, as the proposed amendment to paragraph 25(e) does not extend the pleadings inappropriately, as argued by MPMC, I grant Ms. McLean's request to amend paragraph 25(e).

[77] I disagree with MPMC that the proposed amendments to paragraph 25(f) amount to new facts and assertions not previously advanced. The amendments serve the following functions in paragraph 25(f):

- specifying that an "Amendment" and "Decision" discussed in the paragraph both describe the 2017 Amendment;
- changing an assertion that the 2017 Amendment "... fails to ensure that the public are provided with ..." instead of "... fails to provide ...";
- removing the express statement that it is Ms. McLean who submits that more public participation in monitoring and oversight is (or should be) required;
- changing wording to state that public participation "... [i]s required along with adequate resourcing to enable affected residents to hire independent experts as required to participate in such monitoring and oversight", from the assertion that public participation "... should be required, and financed adequately to allow the hiring of independent experts by the affected residents."

[78] These changes do not expand on the nature of the facts pled, but rather, clarify elements that previously appeared within paragraph 25(f). In both versions, the key elements are that the Permit should have been amended in 2017 to provide for public participation in the monitoring and oversight of the mine, including by funding the public to retain experts. Both speak to Ms. McLean's position that the 2017 Amendment should have provided resourcing or funding for the public to hire experts; even in the existent version of paragraph 25(f), the context implies that this is for the purposes of public engagement "... on ongoing monitoring and planning ..." at the Mine. I therefore grant Ms. McLean's request to amend paragraph 25(f) of her Notice of Appeal.

[79] I emphasize that allowing these proposed amendments to the Notice of Appeal would not mean that the Board accepts them as proven facts, or that the Board panel who hears the appeal must find them to be accurate or relevant to the issues in the appeal. Rather, it would simply notify the other parties that Ms. McLean may be making these assertions in support of her appeal, so the other parties may decide whether to respond to the assertions.

[80] Allowing these proposed amendments under the headings "Background" and "The Appellant" may add somewhat to the length and complexity of the appeal hearing, because post-April 2017 events and decisions related to the Permit will be addressed in the hearing. However, it is within the Board's jurisdiction to consider

this information, and this information is not clearly irrelevant to the subject matter of the appeal. Given that the hearing has not yet been scheduled, the other parties have adequate advance notice of these proposed amendments. Any prejudice to the other parties would only arise from having to prepare submissions and potentially some evidence regarding those events and decisions. This potential prejudice does not outweigh the Appellant's right to a full hearing of the appeal. In addition, allowing these amendments supports all parties' interests in ensuring that the Board panel who will hear and decide the appeal is fully informed about information that may be relevant to the subject matter of the appeal.

[81] Next, I turn to the proposed amendments under the heading "What results are you seeking from an appeal?" The Director and MPMC object to new "Relief Sought" paragraph 2 a. i., which requests that the Board require MPMC to:

as a condition of the Permit, ensure that the effluent discharge meets the B.C. Water Quality Guidelines prior to being discharged into Quesnel Lake, or otherwise meet such site specific water quality guidelines that the permittee has developed through consultation with the citizens' monitoring committee (as contemplated in 2(a)(iii) below), and based on the water quality of Quesnel Lake prior to the 2014 Mine tailings breach;

[82] Regarding the argument that the Board has no jurisdiction to order the formation of a citizens' monitoring committee or to order that such a committee be funded by MPMC, I note that section 2.12 of the Permit in effect on April 7, 2017 required MPMC to maintain a Public Liaison Committee (PLC) in accordance with approved Terms of Reference. Section 2.12 further stated that the PLC must meet at least quarterly to share and receive information about mine activities and the results of monitoring programs with interested members of the public, the Soda Creek Indian Band, the Williams Lake Indian Band, and regulating agencies. In addition, section 3.9 of the Permit in effect on April 7, 2017 provided that in each month that discharge occurred as authorized by section 1.2, MPMC must submit a monthly report to the Director, which would be made available to the PLC, summarizing the volume of treated effluent discharged, a summary of continuous turbidity readings of the treated effluent discharged, and the most recently available water quality results for the effluent discharged. These requirements in the Permit, as it was on April 7, 2017, are not dissimilar to the request that MPMC develop water quality guidelines for Quesnel Lake through consultation with the citizens' monitoring committee.

[83] Consequently, I find that it is not plain and obvious, on a general reading of the new requested remedy, that the Board has no jurisdiction over the amended ground, or that the amended ground is completely irrelevant to the subject matter of the appeal. The appeal of the 2017 Amendment raises issues about the impacts of the discharge of effluent directly to Quesnel Lake, as authorized by the 2017 Amendment, on the water quality in Quesnel Lake. Furthermore, the original Notice of Appeal also requested a citizens' monitoring committee, and therefore, allowing this amendment does not significantly expand the original remedies requested.

[84] I also find that the Director and MPMC have received adequate notice of the proposed new remedy. Although this amendment may add some complexity to the appeal or add length to the hearing, any potential prejudice to the Director and MPMC arising from having to respond to this amendment is balanced against Ms. McLean's right to a full hearing of her appeal.

[85] For the foregoing reasons, this amendment to the Notice of Appeal is allowed.

[86] The Director and MPMC object to the underling portions of the amended "Relief Sought" paragraph 2 a. ii., which requests that the Board require MPMC to:

form a citizens' monitoring committee, which would be involved in obtaining data and/or monitoring data from the effluent discharge, and would be involved for the duration of the Permit, and which committee would be adequately funded on a sustained basis by the permittee to enable it to hire a coordinator, and independent experts to review the information on behalf of locally affected residents;

[87] In the original Notice of Appeal, this paragraph stated:

form a citizens' monitoring committee, which would be involved in obtaining data and/or monitoring data from the effluent discharge, and would be involved for the duration of the Amended Permit, with adequate funding provided on a sustained basis by the Ministry or MPMC to hire a coordinator, as well as independent experts to review the information on behalf of locally affected residents;

[88] I find that the two paragraphs are not materially different from one another. They both refer to a need for a "citizens' monitoring committee, which would be involved in obtaining data and/or monitoring data from the effluent discharge" and would be supported by a "coordinator" and "independent experts" with funding provided by MPMC. The original ground of appeal also suggests, as an alternative, that this committee should be funded by the Ministry. The original ground of appeal also implies that financing (or resourcing) should be provided to hire independent experts to support public participation in monitoring and oversight, whereas the amended ground states the same thing but in a more direct and clear manner. Therefore, allowing this amendment would not broaden the remedies sought. Likewise, denying this amendment would not have a material effect on narrowing the remedies sought.

[89] Furthermore, as discussed above, section 2.12 of the Permit in effect on April 7, 2017 required MPMC to maintain a Public Liaison Committee (PLC) that would meet at least quarterly to share and receive information about mine activities and the results of monitoring programs with interested members of the public, the Soda Creek Indian Band, the Williams Lake Indian Band, and regulating agencies. Also, section 3.9 of the Permit in effect on April 7, 2017 provided that in each month that discharge occurred as authorized by section 1.2, MPMC must submit a monthly report to the Director, which would be made available to the PLC, summarizing the volume of treated effluent discharged, a summary of continuous turbidity readings

of the treated effluent discharged, and the most recently available water quality results for the effluent discharged.

[90] Based on those sections in the Permit, it is not plain and obvious, on a general reading of the proposed amended remedy, that the Board has no jurisdiction over the proposed amended remedy, or that the amended remedy is completely irrelevant to the subject matter of the appeal. I find that the Director and MPMC have received adequate notice of the amended remedy. Although this amendment may add some complexity to the appeal or add length to the hearing, any potential prejudice to the Director and MPMC arising from having to respond to this amendment is balanced against Ms. McLean's right to a full hearing of her appeal.

[91] For the foregoing reasons, this amendment to the Notice of Appeal is allowed.

[92] The Director and MPMC object to the underlined portions of the amended "Relief Sought" paragraph 2 a. v., which requests that the Board require MPMC to:

through consultations with the citizens' monitoring committee, carry out sufficient research on the long-term impacts on the Quesnel Lake ecosystem of both the 2014 Mine tailings breach and the effluent discharge authorized under the Permit (as amended) to allow a determination of whether the permitted effluent discharge is causing incremental adverse effects over and above those caused by the 2014 breach;

[93] In the original Notice of Appeal, this paragraph stated:

ensure that sufficient research is conducted on the long-term impacts on the Quesnel Lake ecosystem of both the Mine tailings breach and the permitted effluent discharge to allow a determination of whether the permitted effluent discharge is causing incremental adverse effects over and above those caused by the spill;

[94] I find that the addition of the phrase "through consultations with the citizens' monitoring committee" with respect to conducting research on the impacts of the authorized effluent discharge on the Quesnel Lake ecosystem is consistent with the remedies already sought in the original Notice of Appeal, which included (albeit in a different paragraph under "What results are you seeking from an appeal?") asking for the formation of a citizens' monitoring committee which would be involved in obtaining data and/or monitoring data from the effluent discharge.

[95] For the same reasons provided above, I find that it is not plain and obvious, on a general reading of the proposed amended remedy, that the Board has no jurisdiction over the proposed amended remedy, or that the amended remedy is completely irrelevant to the subject matter of the appeal. I find that the Director and MPMC have received adequate notice of the amended remedy. I do not consider this amendment to be likely to add complexity to the appeal or length to the hearing, as it amounts to a clearer rewording of the ground of appeal, and focuses the pleading to one of two alternative arguments (that MPMC should fund

the committee, as opposed to MPMC or the Ministry). However, if any complexity is added to the appeal, or length is added to the hearing, any potential prejudice to the Director and MPMC arising from having to respond to this amendment is balanced against Ms. McLean's right to a full hearing of her appeal.

[96] For the foregoing reasons, this amendment to the Notice of Appeal is allowed.

[97] The Director and MPMC object to new "Relief Sought" paragraph 2 b., which requests that the Board vary the Permit to:

provide that if the permittee does not fulfill its reporting requirements under the Permit, including but not limited to those requirements imposed by sections 2.5 to 2.11, 3.1, 3.2, 4.1 and 4.2 of the Permit, by any timelines specified in those sections, the permittee will not be authorized to exercise any of its rights to discharge treated effluent from the site runoff and seepage water collection and management systems to Quesnel Lake, as provided under section 1.2 of the Permit (as may be varied from time to time), until the Director determines that such outstanding reporting requirements are fulfilled in compliance with the applicable sections of the Permit;

[98] This requested remedy essentially asks the Board to add a condition in the Permit that would take away MPMC's ability to discharge effluent under section 1.2 of the Permit for non-compliance with the reporting requirements in the Permit, if such non-compliance occurs in the future. I find that it is unclear from the information currently before the Board whether the 2017 Amendment added or amended any of the reporting requirements in the Permit. Only those portions of the Permit that were added or amended by the 2017 Amendment are within the scope of the appeal of the 2017 Amendment. Therefore, I am unable to determine whether this proposed remedy is within the scope of the Board's jurisdiction in deciding this appeal.

[99] In any event, I find this requested remedy to be inappropriate. The Director has various options under the *Act* to address non-compliance with reporting and/or other requirements in the Permit. Options include including imposing an administrative penalty under section 115(1)(c) of the *Act* or further amending the Permit under section 16 of the *Act*. The proposed amendment of paragraph 2(b) of the "Relief Sought" effectively limits the Director's discretion in how to respond to any non-compliance with reporting requirements. The proposed amendment would prevent the Director from exercising the full range of his statutory discretion in the event of future non-compliance.

[100] As noted by the Director and MPMC, issues of compliance are separate decisions from the issuance or amendment of a permit. It is not appropriate to include a term in a permit that fetters the Director's discretion in responding to some future non-compliance with the Permit. If non-compliance occurs, the Director's ability to respond must not be restricted, and he must be able to respond with any of his discretionary powers under the *Act*. As argued by the Director and

MPMC, how the Director responds to issues of non-compliance must be decided based on the circumstances at that time; the Director should not include a prescriptive response in the Permit.⁶ For these reasons, I deny the request to add this remedy to the Notice of Appeal.

[101] The Director and MPMC object to new "Relief Sought" paragraph 3, which requests that the Board require MPMC to:

vacate the April 2017 Amendment and remit the matter back to the Director with directions incorporating the requirements in paragraph 2 of the above-stated relief sought;

[102] I find that this proposed remedy essentially seeks the same outcomes as the proposed remedies under "Relief Sought" paragraph 2, but through a different means; i.e., by requesting that the Board exercise its power under section 103(a) of the *Act* to remit the matter back to the Director with directions, rather than by requesting that the Board exercise its power under section 103(b) of the *Act* to vary the Permit. In this sense the proposed new remedy simply reflects the Board's powers under the *Act*.

[103] To the extent that this proposed remedy incorporates amendments to the proposed "Relief Sought" under paragraph 2 which MPMC and the Director object to, my findings above address their objections. I have granted the proposed amendments under paragraph 2(a), but not the proposed new "Relief Sought" paragraph 2 b.

[104] Accordingly, I find that this proposed new remedy is within the Board's jurisdiction, the Director and MPMC have adequate notice of the proposed new remedy, and allowing this proposed new remedy to be added will not add further complexity or length to the hearing. This proposed amendment is allowed.

[105] In summary, I grant Ms. McLean's proposed amendments to her Notice of Appeal, with the exception of paragraph 2(b) of her "Relief Sought" section.

DECISION AND ORDER

[106] In making this decision, I have fully considered all of the evidence and submissions made, whether or not specifically referred to in this decision.

⁶ See, for example, *Stemijon Investments Ltd. v. Canada (Attorney General)*, 2011 FCA 299 (CanLII), where the court held, at paragraph 24, "A decision that is the product of a fettered discretion must *per se* be unreasonable."

[107] Based upon my findings above, I grant Ms. McLean's application, in part.

"Darrell Le Houillier"

Darrell Le Houillier, Chair
Environmental Appeal Board

November 3, 2021

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

Reasons for Appeal and Particulars

Background:

1. The Mount Polley Mine (the "Mine") is owned and operated by Mount Polley Mining Corporation ("MPMC"), a subsidiary of Imperial Metals. The Mine produces copper and gold, and is located southwest of Quesnel Lake.
2. MPMC holds Permit #11678 for the discharge of effluent from the Mine to land and surface water (the "Permit"), which Permit was issued under section 14 of the Environmental Management Act, SBC 2003, c 53, section 14 (the "PermitAct").
3. On August 4, 2014, the Mine's tailings dam failed and released millions of cubic metres of tailings into Hazeltine Creek and Polley Lake and subsequently into Quesnel Lake (the "Mine tailings breach"). The tailings were known to contain substances that can be toxic to the environment. Operation of the Mine was suspended following the breach.
4. In 2015, MPMC was allowed to resume operations at the mine. Following the failure of the tailings storage facility, the Mine produces more contaminated effluent than can be stored on-site.
5. On November 29, 2015, the Director ~~granted~~ issued an amendment to the Permit to allow MPMC to discharge effluent directly to Quesnel Lake for two years on a temporary basis.
6. On April 7, 2017, the Director ~~approved an~~ issued a further amendment (the "April 2017 Amendment") to the Permit #11678 under section 14 of the Act authorizing MPMC to discharge mine effluent ~~directly to~~ through a submerged diffuser ~~in~~ into Quesnel Lake for the remaining anticipated operating life of the Mine up to 2022. ~~This is the decision at issue in this appeal (the "Decision"). The Amendment essentially makes permanent the previous temporary authorization for discharge to Quesnel Lake, as set out in the November 29, 2015 amendment. The Amendment sets limits on contaminant concentrations at the outlet of the treatment plant (i.e. the undiluted effluent entering Quesnel Lake). It also states~~
7. ~~6.~~ The April 2017 Amendment made permanent the previous temporary authorization for discharge to Quesnel Lake, as set out in the November 29, 2015 amendment to the Permit. The April 2017 Amendment set limits on contaminant concentrations at the outlet of the treatment plant (i.e. the undiluted effluent entering Quesnel Lake). It also stated that the discharge characteristics must be such that, while discharging, certain limits on contaminant concentrations must be met at the edge of the Quesnel Lake "Initial Dilution Zone" ("IDZ"), 100 metres from the discharge point. Within the IDZ, contaminant concentrations are allowed to exceed provincial

**APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017
amendments to Permit #11678**

Water Quality Guidelines and legislated limits set out in the *Contaminated Sites Regulation*.

8. On October 2, 2018 and February 1, 2020 (the "February 2020 Amendment") the Director made a number of further amendments to the Permit, which varied the terms of the April 2017 Amendment.
9. In addition on or about September 18, 2020, MPMC and the Director entered into a consent order before the Environmental Appeal Board (the "Board") which had the effect of further amending the Permit.
10. MPMC failed to comply with or meet many of the deadlines imposed under both the April 2017 Amendment and the subsequent amendments to the Permit. Specifically, and to the best of the knowledge of the appellant:
 - a. MPMC failed to comply with the requirement in section 2.8 of the April 2017 Amendment to submit a final water management plan and implementation schedule to the Director by December 1, 2019;
 - b. MPMC failed to comply with the requirement in section 2.9 of the April 2017 Amendment to produce a final assessment report on refining and implementing an improved copper removal process to the Director within 60 working days of the April 2017 Amendment;
 - c. MPMC failed to comply with section 2.10 of the April 2017 Amendment to submit a Bench Scale Testing Plan within 60 days of the April 2017 Permit's issuance and a design for a Pilot Passive Water Treatment system by August 15, 2017; and
 - d. MPMC failed to comply with the requirement in section 2.10 of the February 2020 Amendment as subsequently amended in September 2020 to submit a revised water management plan and implementation schedule to the Director prior to December 1, 2020.
11. ~~7.~~ Section 100 of the *Environmental Management Act* ("~~EMA~~") provides that a person aggrieved by a decision of a director may appeal the decision to the Board.

The Appellant:

~~12.8.~~ Ms. McLean is a person aggrieved by the ~~Decision, April 2017 Amendment~~ under section 100(1) of the ~~EMA Act~~.

~~9.~~ Ms. McLean owns a home on 13 acres of property at Mitchel Bay on Quesnel Lake, near Horsefly, BC (the "Quesnel Lake Property") and lives at

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

[the Quesnel Lake Property with her husband](#). One and a half kilometres of the Quesnel Lake Property border Quesnel Lake. ~~Ms. McLean and her husband spend six months per year at the Quesnel Lake Property, and intend to move there full time when they retire in five years.~~ They have owned the Quesnel Lake Property since 2012. Ms. McLean has three adult children and two grandchildren, ages 8 and 6. Her children and grandchildren spend approximately three weeks of the year at the Quesnel Lake Property: one week over Christmas holidays, one week over spring break and one week in the summer.

~~13.10.~~Ms. McLean ~~lives the other six months of the year in Calgary, Alberta. She is the Chief Financial Officer of a company, is semi-retired and works remotely when she is in Horsefly. She is 60 years old~~from [the Quesnel Lake Property](#).

~~14.11.~~Ms. McLean's Quesnel Lake Property is approximately 2 kilometres from where the tailings from the [2014](#) Mine tailings breach entered Quesnel Lake. This is also where the diffuser pipe depositing into the IDZ provided for by the [April 2017](#) Amendment is located. This area is referred to as the "western basin" of the [Quesnel](#) Lake.

~~15.12.~~Ms. McLean and her husband hold BC Water License 055142 from the Ministry of Forests, Lands and Natural Resource Operations. This license allows them to divert 500 gallons of water per day from Quesnel Lake, to be used for domestic purposes at a single dwelling.

~~16.13.~~Ms. McLean and her family get all their water for the Quesnel Lake Property from Quesnel Lake. In the past this included drinking water, but since the Mine tailings breach they do not draw any drinking water from the western basin. Ms. McLean [often](#) fishes ~~often~~ in Quesnel Lake. However, since the Mine tailings breach, she and her family no longer eat the fish from the western basin. Instead, they boat 10 minutes out to the deeper part of the Lake upstream to the east of Cariboo Island to fish. This is approximately 5 – 8 kilometres from where they used to fish. Ms. McLean and her family, including her two young grandchildren, swim in the Lake. They have continued to do so since the Mine tailings breach [but remain concerned about potential impacts of doing so](#).

~~17.14.~~Ms. McLean is concerned about the contamination of Quesnel Lake ~~by effluent that the Amendment authorizes to be discharged and that will affect the Lake's water and fish~~caused by [the discharge of effluent authorized under the Permit, including under the April 2017 Amendment, and the corresponding impacts on Quesnel Lake water and aquatic life](#).

~~18.15.~~Ms. McLean is also concerned about the cumulative effects of ~~the contamination of Quesnel Lake that is permitted by the Amendment, compounding on~~ [effluent discharge authorized under the Permit,](#)

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

[including the April 2017 Amendment](#), with the contamination caused by the [Mines 2014 Mine's](#) tailings breach (as confirmed by the Ministry of Environment's impact assessment conducted after the breach).

- 19.16. Ms. McLean has been an active member of Concerned Citizens of Quesnel Lake ("CCQL") since its inception in 2015, and this appeal is made with the support of CCQL and its members.
- 20.17. ~~During MPMC's consultation period for the proposed permit amendment, CCQL wrote letters to the Director, which were signed by most of the members including Ms. McLean. Ms. McLean attended a community meeting about the proposed amendment in Likely, BC, and emailed questions to MPMC about her concerns with the proposed permit amendment in advance of the meeting. She also attended webinars hosted by MPMC, and emailed questions to MPMC in advance of the webinars.~~ Ms. McLean is an active member of the Mine's public liaison committee ("PLC"). Her concerns expressed at these various forums ~~focused~~ [focuses](#) on the contaminants levels, the lack of an adequate treatment ~~plant for~~ [of](#) the effluent, and access to information from MPMC about the proposal and the Mine generally.
- 21.18. The meeting, webinars and PLC [leading up to the April 2017 Amendment](#) did not provide the residents that rely on the Quesnel Lake watershed sufficient information on the health and environmental impacts of ~~the Decision~~ [effluent discharge](#), or sufficient information on the impacts of the Mine tailings breach ~~to allow for an understanding of the cumulative effects of the Decision.~~ MPMC ~~limited the scope of information provided, scheduled meetings in the fall and winter months when many residents around the Lake were unavailable, and was unclear with meeting process, including requiring questions be emailed in advance~~ [alone, or cumulatively with the effluent discharge authorized under the Permit \(including the amendments thereto\).](#)
- 22.19. In December 2015, Ms. McLean filed an appeal with the Board of the November 29, 2015 amendment to [the Permit #11678](#), which ~~allowed for~~ [amendment authorized](#) effluent discharge [from the Mine](#) into Quesnel Lake on a temporary basis. She withdrew that appeal due to a lack of resources.
- 23.20. In summary, Ms. McLean and her husband own ~~residential~~ property and live on the shore of Quesnel Lake, within two kilometres of the [Mine effluent](#) IDZ. They have and rely on a water licence for water for domestic use from Quesnel Lake. Ms. McLean and her children and grandchildren engage in recreational activities in and around Quesnel Lake. They swim and fish in the Lake. The ~~Decision~~ [Permit](#) authorizes the discharge of contaminants to Quesnel Lake. For the reasons listed above,

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

Ms. McLean is aggrieved by the ~~Decision~~[April 2017 Amendment](#).

Reasons for Appeal:

~~24.21~~Ms. McLean submits that the discharge of contaminated effluent directly to Quesnel Lake should not have been ~~permitted~~[authorized](#) for the following reasons:

- a. There was insufficient evidence to support the Director's apparent conclusion that the use of an IDZ would not cause significant adverse effects [to the environment](#). The Director should not have permitted the use of an IDZ in this case because it allows MPMC to externalize the cost of ~~water~~[effluent](#) treatment [and management](#) at the expense of the receiving environment and the people, animals, and plants that rely on the high quality waters of Quesnel Lake.
- b. An IDZ should certainly not be allowed where the best available technology ("BAT") has not been ~~applied~~[properly evaluated](#). In this case, the Director dismissed evidence of BAT that may have been available and failed to require MPMC to undertake sufficient investigation of potential alternatives.
- c. In addition to potential alternative technologies for reducing contaminant levels, the Director did not require MPMC to sufficiently investigate potential alternative approaches to the discharge, including alternate discharge points or the development of site-specific water quality objectives based on the conditions of Quesnel Lake prior to the [2014](#) Mine tailings breach (e.g. non-degradation standard).
- d. If BAT could not sufficiently reduce the contaminant levels in the effluent to the applicable standards, the Director should not have permitted MPMC to discharge effluent to Quesnel Lake until such an alternative was developed.
- e. No discharge of effluent [from the Mine](#) to Quesnel Lake should be ~~permitted~~[authorized](#), particularly without applying BAT, until the cumulative long-term effects of the ~~initial~~[2014](#) Mine tailings breach are fully understood.

The ~~permitted-effluent~~ discharge [authorized under the Permit, including the April 2017 Amendment](#), will increase the contaminant load in Quesnel Lake, including for contaminants such as selenium and arsenic that bioaccumulate in the food chain, and of nutrients that have and will continue to impact the oligotrophic nature of the Lake. Soluble copper was recently identified as a problem with the exposed tailings below Polley Lake, and there are many tonnes of

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

tailings that have been deposited into Quesnel Lake. Because the long-term impact of the [2014 Mine tailings breach](#) on Quesnel Lake remains unknown, it is difficult to distinguish between impacts that may have resulted from the ~~initial-that~~ Mine tailings breach on the one hand, and those that may be caused by the ongoing ~~permitted releases~~[authorized effluent discharge](#), and their contribution to the total contaminant load on the other hand.

For example, since the ~~initial-2014~~ Mine tailings breach, Quesnel Lake residents have noted an increase in algal growth along the shoreline, slime and discolouration coatings on beach rocks, and the development of a previously unseen green tint in the lake water. In addition, the water filters of residents drawing their drinking water from the Lake have begun clogging with sediment much more quickly than prior to the ~~spill~~[2014 breach](#). These phenomena have been dismissed by the Province and MPMC, and no serious investigation of the potential links between resident observations and either the [2014 Mine tailings breach](#) or the ongoing [effluent discharge](#) took place prior to the Director issuing the [April 2017 Amendment](#) Amendment.

Tailings were also deposited in Polley Lake by the [2014 Mine tailings breach](#). The long-term impacts to Polley Lake are also not fully known, and water from Polley Lake drains down Hazeltine Creek into Quesnel Lake.

In addition, ongoing research by the University of Northern British Columbia's Quesnel River Research Centre ("UNBC") on the effects of the ~~spill-2014 Mine tailings breach~~ may be impeded by interference from ongoing releases of contaminants authorized by the [April 2017 Amendment](#). Preliminary data from UNBC studies that were provided to residents and submitted to the Ministry of Environment have indicated significant change from the conditions that existed prior to the Mine tailings breach, and probable effects on water quality since the Mine tailings breach and discharge have not been acknowledged or acted upon by the Ministry.

- f. The [April 2017 Amendment](#) fails to ~~provide ensure that~~ the public [are provided](#) with operating and environmental data and reports in a timely manner, and ~~fails to provide~~ sufficient opportunities for public engagement on ongoing monitoring and planning, which compounds the limited engagement in the lead up to the ~~Decision~~[April 2017 Amendment](#). ~~Ms. McLean submits that more~~ [More](#) direct public participation in monitoring and oversight ~~should be required, and financed adequately to allow for the hiring of~~ [s required along with adequate resourcing to enable affected residents to hire independent experts by the affected residents as required to participate in such monitoring and oversight](#).

APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017 amendments to Permit #11678

What results are you seeking from an appeal?

Ms. McLean asks the Board:

1. to set aside the April 7, 2017 ~~amendment of Permit #11678~~Amendment;
2. in the alternative, to vary the Permit ~~#11678~~ to:

a. require the permittee to:

~~a. develop site specific water quality criteria based on the water quality of Quesnel Lake prior to the Mine tailings breach, which will ensure the Lake water quality and aquatic environment are not impacted by the effluent discharge and, at the least, ensure that the characteristics of the discharge at the outlet of the treatment plant meet B.C. Water Quality Guidelines prior to entering Quesnel Lake;~~

i. ~~as a condition of the Permit, ensure that the effluent discharge meets the B.C. Water Quality Guidelines prior to being discharged into Quesnel Lake, or otherwise meet such site specific water quality guidelines that the permittee has developed through consultation with the citizens' monitoring committee (as contemplated in 2(a)(iii) below), and based on the water quality of Quesnel Lake prior to the 2014 Mine tailings breach;~~

ii. ~~b. form a citizens' monitoring committee, which would be involved in obtaining data and/or monitoring data from the effluent discharge, and would be involved for the duration of the Amended Permit, with adequate funding provided and which committee would be adequately funded on a sustained basis by the Ministry or MPMC permittee to enable it to hire a coordinator, as well as and independent experts to review the information on behalf of locally affected residents;~~

iii. ~~c. make all data and reporting available publicly online in a timely manner, not only at the library;~~

iv. ~~d. use BAT, including a superior treatment plant that will reduce the contamination entering Quesnel Lake;~~

v. ~~e. ensure that through consultations with the citizens' monitoring committee, carry out sufficient research is conducted on the long- term impacts on the Quesnel Lake ecosystem of both the 2014 Mine tailings breach and the permitted effluent discharge authorized under the Permit (as~~

**APPENDIX: Proposed Revised Notice of Appeal of April 7, 2017
amendments to Permit #11678**

amended) to allow a determination of whether the permitted effluent discharge is causing incremental adverse effects over and above those caused by the ~~sp#~~2014 breach; and

vi. ~~f.~~ report on whether the ~~Amendment may change~~ effluent discharge authorized under the Permit (as amended) has any effects on the trophic state of the lake, and increase algal and other biological growth effects in Quesnel Lake, ~~which can negatively affect water quality and enjoyment of the Lake;~~ ; and

b. provide that if the permittee does not fulfill its reporting requirements under the Permit, including but not limited to those requirements imposed by sections 2.5 to 2.11, 3.1, 3.2, 4.1 and 4.2 of the Permit, by any timelines specified in those sections, the permittee will not be authorized to exercise any of its rights to discharge treated effluent from the site runoff and seepage water collection and management systems to Quesnel Lake, as provided under section 1.2 of the Permit (as may be varied from time to time), until the Director determines that such outstanding reporting requirements are fulfilled in compliance with the applicable sections of the Permit;

3. in the further alternative, if the Board does not vary the Permit itself, to vacate the April 2017 Amendment and remit the matter back to the Director with directions incorporating the requirements in paragraph 2 of the above-stated relief sought;
4. ~~3.~~ to order that Ms. McLean not be required to pay costs in any event of the cause; and
5. ~~4.~~ any combination of the above and/or any other remedy the Board considers appropriate.