KEJAKSAAN NEGERI TONDANO

" UNTUK - KEADILAN "

P - 29

SURAT - DAKWAAN

NO. REG. PERK. : PDM-13/Tdano/2005

A. TERDAKWA :

TERDAKWA I :

PT Newmont Minahasa Raya dalam hal ini diwakili oleh salah satu Direksi PT. Newmont Minahasa Raya yaitu :

Nama lengkap	:	RICHARD BRUCE NESS.
Tempat lahir	:	Minnesota, Amerika Serikat.
Umur / Tanggal lahir	:	55 Tahun / 27 Desember 1949.
Jenis kelamin	:	Laki-laki.
Kebangsaan / kewarganegaraan	:	Amerika Serikat (Nomor Passport : 710139707).
Tempat Tinggal	:	- Menara Rajawali Lt. 26 Jln. Mega Kuningan Lot. 5.1 Kawasan Mega Kuningan Jakarta. - Jln. Wolter Monginsidi No. 50 Manado – Sulawesi Utara.
Agama	:	Islam.
Pekerjaan	:	Swasta / Presiden Direktur PT. Newmont Minahasa Raya.
Pendidikan	:	Bussines Management

TERDAKWA II :

Nama lengkap	:	RICHARD BRUCE NESS.
Tempat lahir	:	Minnesota, Amerika Serikat.
Umur / Tanggal lahir	:	55 Tahun / 27 Desember 1949.
Jenis kelamin	:	Laki-laki.
Kebangsaan / kewarganegaraan	:	Amerika Serikat (Nomor Passport : 710139707).
Tempat Tinggal	:	- Menara Rajawali Lt. 26 Jln. Mega Kuningan Lot. 5.1 Kawasan Mega Kuningan Jakarta. - Jln. Wolter Monginsidi No. 50 Manado – Sulawesi Utara.

(Unofficial translation)

DISTRICT PROSECUTOR'S OFFICE OF TONDANO

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"IN THE INTERESTS OF JUSTICE" P-29

INDICTMENT

NO. REG. PERK.: PDM-13/Tdano/2005

A. **ACCUSED:**

ACCUSED I:

PT Newmont Minahasa Raya in this matter being represented by one of PT Newmont Minahasa Raya's Board of Directors, namely:

Full Name	:	RICHARD BRUCE NESS.
Birthplace	:	Minnesota, the United States of America.
Age/Date of birth	:	55 Years/ 27 December 1949.
Sex	:	Male
Nationality/Citizenship	:	The United States of America (Passport Number: 710139707)
Domicile	:	- Menara Rajawali 26th Floor Jln. Mega Kuningan Lot. 5.1 Kawasan Mega Kuningan Jakarta. - Jln. Wolter Monginsidi No. 50 Manado – North Sulawesi.
Religion	:	Islam.
Occupation	:	Private person/ the President Director of PT Newmont Minahasa Raya.
Education	:	Business Management.

ACCUSED II :

Full Name	:	RICHARD BRUCE NESS.
Birthplace	:	Minnesota, United States of America.
Age/Date of birth	:	55 Years/ 27 December 1949.
Sex	:	Male
Nationality/Citizenship	:	United States of America (Passport Number: 710139707)
Domicile	:	- Menara Rajawali 26th Floor Jln. Mega Kuningan Lot. 5.1 Kawasan Mega Kuningan Jakarta. - Jln. Wolter Monginsidi No. 50 Manado – North Sulawesi.

Religion	:	Islam.
Occupation	:	Private person/ the President Director of PT Newmont Minahasa Raya.
Education	:	Business Management.

B. **DETENTION :**

1. By Investigator:

- No detention.

2. By Public Prosecutor:

- No detention.

C. **INDICTMENT:**

Specifically for Accused I

PRIMARY:

---------- That the Accused, i.e. Accused I PT. NEWMONT MINAHASA RAYA whoin this instance is represented by RICHARD BRUCE NESS as the Director or one of the members of the Board of Directors of PT. NEWMONT MINAHASA RAYA, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; unlawfully and, intentionally committed an action which result in environmental pollution and/or environmental damage; the action was committed by the Accused as follows:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company that engages in the business of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and is recorded as an industry that produces Hazardous and Toxic Waste (B3) as listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activity in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, intentionally, did not carry out actions which were supposed to have been carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activity in order to prevent environmental damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. Newmont Minahasa Raya, did not dispose of and place tailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

  - The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings spread vertically and horizontally;

- The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

consequently causing environmental pollution and/or environmental damage, such as decreasing the quality of sea water, causing it to no longer function in accordance with its designation.

- That Accused I, PT. Newmont Minahasa Raya which has been operating since 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

  Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

  - pH : 6-9 mg/l.
  - As (III) : 0.5 mg/l.
  - CN WAD : 0.5 mg/l.
  - CN Free : 0.5 mg/l.
  - Hg : 0.008 mg/l.
  - Cu : 1.0 mg/l.
  - Fe : 3.0 mg/l.

  The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

  - October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
  - October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
  - November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
  - November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).

- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).

- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).

- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).

- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➢ As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that the Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation.

That subsequently, pursuant to Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is to be reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the

Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

1. The study protocol did not conform with the normal ERA procedure;
2. The quality of data used was insufficient;
3. The data used did not represent seasonal variations; and
4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out tailings dumping into the sea from the year 2001 up to 2004 without possessing a permit.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:

1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standards for Sea Water in respect of Marine Biota.
2. The tailings of the Accused 1, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
3. Sludge from the sediment pond of the Accused 1 PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

The actions of Accused I are as meant in and punishable under Article 41 paragraph (1) in conjunction with Articles 45, 46 paragraph (1), and Article 47 of Law No.23 of 1997.

SUBSIDIARY

---------- That the Accused, i.e. Accused I PT. NEWMONT MINAHASA RAYA who in this instance is represented by RICHARD BRUCE NESS as the Director or one of the members of the Board of Directors of PT. NEWMONT MINAHASA RAYA, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; in contravention of the prevailing laws and regulations had intentionally released or disposed of substances, energy, and/or other hazardous or toxic components onto or into the soil, into the air, or into the surface water, where it had known or had grounds to have foreseen that such action could cause environmental pollution and/or environmental damage or endanger public health or the lives of others; such action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company that engages in the business of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and is recorded as an industry that produces Hazardous and Toxic Waste (B3) as listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).
- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16

paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, intentionally did not carry out actions that were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environment damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA, did not dispose of and place tailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

  - The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings also spread vertically and horizontally;
  - The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

  and the two phenomena above could endanger public safety and people's lives.

- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

- pH : 6-9 mg/l.
- As (III) : 0.5 mg/l.
- CN WAD : 0.5 mg/l.
- CN Free : 0.5 mg/l.
- Hg : 0.008 mg/l.
- Cu : 1.0 mg/l.
- Fe : 3.0 mg/l.

The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

- October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
- October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
- November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).

- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).

- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).

- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

- As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that the Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation. That subsequently, pursuant to Letter of the Minister of the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for

the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is to be reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

  1. The study protocol did not conform with the normal ERA procedure;
  2. The quality of data used was insufficient;
  3. The data used did not represent seasonal variations; and
  4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

  That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out dumping of tailings into the sea from the year 2001 up to 2004 without possessing a permit.

- That the tailing disposed of, although detoxified, continued to exceed the stipulated quality standard and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the

Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:

1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standards for Sea Water in respect of Marine Biota.
2. The tailings of the Accused 1, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
3. Sludge from the sediment pond of the Accused 1 PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

- That because of the pollution committed by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and, in fact, the condition of the Dusun Buyat area is no longer suitable as a place to live, causing a relocation of the people of Dusun Buyat.

The actions of Accused I are as meant in and punishable under Article 43 paragraph (1) in conjunction with Articles 45, 46 paragraph (1), and Article 47 of Law No.23 of 1997.

FURTHER SUBSIDIARY

---------- That the Accused, i.e. Accused I PT. NEWMONT MINAHASA RAYA whoin this instance is represented by RICHARD BRUCE NESS as the Director or one of the members of the Board of Directors of PT. NEWMONT MINAHASA RAYA, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; because of its negligence committed an action which result in environmental pollution and/or environmental damage; the action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company that engages in the business of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and is recorded as an industry that produces Hazardous and Toxic Waste (B3) as listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, because of its negligence, did not carry out actions which were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environmental damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. Newmont Minahasa Raya, did not dispose of and placetailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

- The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings spread vertically and horizontally;
- The solid part of the tailings could still also be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

consequently causing environmental pollution and/or environmental damage, such as decreasing the quality of sea water, causing it to no longer function in accordance with its designation.

- That Accused I, PT. Newmont Minahasa Raya which has been operating since 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

  Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

  - pH : 6-9 mg/l.
  - As (III) : 0.5 mg/l.
  - CN WAD : 0.5 mg/l.
  - CN Free : 0.5 mg/l.
  - Hg : 0.008 mg/l.
  - Cu : 1.0 mg/l.
  - Fe : 3.0 mg/l.

  The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

  - October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
  - October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).

- November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).

- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).

- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).

- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➢ As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the

subject of a permit from the Minister, so that the Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation. That subsequently, pursuant to Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

  1. The study protocol did not conform with the normal ERA procedure;
  2. The quality of data used was insufficient;
  3. The data used did not represent seasonal variations; and
  4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

  That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out tailings dumping into the sea from the year 2001 up to 2004 without possessing a permit and the Accused, who was aware of the insufficiency and weaknesses in carrying out the ERA study, did not exert maximum effort to prevent environmental pollution.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:

  1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standards for Sea Water in respect of Marine Biota.
  2. The tailings of the Accused I, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  3. Sludge from the sediment pond of the Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.

4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.

5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

- That because of the pollution committed by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and in fact, the condition of the Dusun Buyat area is no longer suitable as a dwelling place, causing the people of Dusun Buyat to relocate elsewhere.

The actions of Accused I are as meant in and punishable under Article 42 paragraph (1) in conjunction with Articles 45, 46 paragraph (1), and Article 47 of Law No.23 of 1997.

FURTHER MORE SUBSIDIARY:

---------- That the Accused, i.e. Accused I PT. NEWMONT MINAHASA RAYA who in this instance is represented by RICHARD BRUCE NESS as the Director or one of the members of the Board of Directors of PT. NEWMONT MINAHASA RAYA, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; in contravention of the prevailing laws and regulations because of its negligence has committed actions that released or disposed of substances, energy, and/or other hazardous or toxic components onto or into the soil, into the air, or into the surface water, where it knew or had grounds to have foreseen that such action could cause environmental pollution and/or environmental damage or endanger public health or the lives of others, such action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company that engages in the business of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number:

B-43/Pres/11/1986 dated 6 November 1986, and is recorded as an industry that produces Hazardous and Toxic Waste (B3) as listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, because of its negligence, did not carry out actions that were supposed to be carried out guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environment damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA, did not dispose of and place tailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

  - The liquid part of the tailings become directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings also spread vertically and horizontally;
  - The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

and the two phenomena above could endanger public safety and people's lives.

- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

  Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

  - pH : 6-9 mg/l.
  - As (III) : 0.5 mg/l.
  - CN WAD : 0.5 mg/l.
  - CN Free : 0.5 mg/l.
  - Hg : 0.008 mg/l.
  - Cu : 1.0 mg/l.
  - Fe : 3.0 mg/l.

  The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

  - October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
  - October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
  - November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
  - November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
  - December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
  - December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
  - January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
  - February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).

- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).

- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).

- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).

- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➢ As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and/or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with the regulation.
- That pursuant to the Letter of the Minister of the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to

dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.
3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.
4. The result of the ERA Study is to be reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.
5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

1. The study protocol did not conform with the normal ERA procedure;
2. The quality of data used was insufficient;
3. The data used did not represent seasonal variations; and
4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out dumping of tailings into the sea from the year 2001 up to 2004 without possessing a permit and the Accused, who was aware of the insufficiency and weaknesses in carrying out the ERA study, did not exert maximum effort its prevent environmental pollution.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:
  1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standard for Sea Water in respect of Marine Biota.
  2. The tailings of the Accused 1, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  3. Sludge from the sediment pond of the Accused 1 PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
  5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).
- That because of the pollution committed by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and in fact, the condition of the Dusun Buyat area is no longer suitable as a dwelling place, causing the people of Dusun Buyat to relocate elsewhere.

The actions of Accused I are as meant in and punishable under Article 44 paragraph (1) in conjunction with Articles 45, 46 paragraph (1), and Article 47 of Law No.23 of 1997.

Specifically for Accused II

PRIMARY

---------- That the Accused, i.e. Accused II RICHARD BRUCE NESS as the President Director of PT. NEWMONT MINAHASA RAYA, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; unlawfully and intentionally committed an action which has resulted in environmental pollution and/or environmental damage; that action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company operating in the business field of mining, producing gold pursuant to a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number : B-43/Pres/11/1986 dated 6 November 1986, and recorded as an industry producing Hazardous and Toxic Waste (B3) listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste under the waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).
- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, intentionally did not carry out actions that were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environment damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA, did not disposeof and placetailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

  - The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings also spread vertically and horizontally;
  - The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

  consequently causing environmental pollution and/or environmental damage, such as the decrease in the quality of sea water, causing it to no longer function in accordance with its designation.

- That Accused II, RICHARD BRUCE NESS, as President Director of PT NMR, has the duty and bears the responsibility for supervising, controlling and instructing his subordinates to carry out duties in accordance with the prevailing provisions, whether those provisions have been stipulated by the company or under the prevailing laws and regulations in Indonesia.

- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

- CN : 0.5 mg/l.
- AS : 0.5 mg/l.
- Hg : 5 µg/l.

Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

- pH : 6-9 mg/l.
- As (III) : 0.5 mg/l.
- CN WAD : 0.5 mg/l.
- CN Free : 0.5 mg/l.
- Hg : 0.008 mg/l.
- Cu : 1.0 mg/l.
- Fe : 3.0 mg/l.

The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

- October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
- October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
- November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).

- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).

- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).

- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).

- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➢ As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation.

- That pursuant to the Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF State Minister for the Environment/Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA is allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

1. The study protocol did not conform with the normal ERA procedure;

2. The quality of data used was insufficient;

3. The data used did not represent seasonal variation; and

4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out tailings dumping into the sea from the year 2001 up to 2004 without possessing a permit.

- That Accused II as the President Director of PT. NMR, did not take any action to prevent the increase of some of the parameters as mentioned-above which exceeded the stipulated quality standards. Accused II was also not serious in taking action to ensure that PT NMR possessed a permit to dispose of its waste, moreover Accused II who knew that PT. NMR had not obtained a permit to dump tailings into the sea, allowed/did not give any instructions to stop the dumping of tailings into the sea by PT. NMR.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of theCriminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:

  1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standard for Sea Water in respect of Marine Biota.
  2. Tailings of Accused I, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  3. Sludge from the sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
  5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

- That because of the pollution conducted by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and in fact, the condition of the Dusun Buyat area is no longer suitable as a dwelling place, causing the people of Dusun Buyat to relocate elsewhere.

The actions of the Accused are as meant in and punishable under Article 41 paragraph (1) of Law Number 23 of 1997.

SUBSIDIARY

---------- That the Accused, Accused II RICHARD BRUCE NESS as President Director of PT. NMR, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in

Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; in contravention of the prevailing laws and regulations, intentionally released or disposed of substances, energy, and/or other hazardous or toxic components onto or into the soil, into the air, or into the surface water, where he knew or had grounds to have foreseen that such action could cause environmental pollution and/or environmental damage or endanger public health or people's lives; that action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company operating in the business field of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and recorded as an industry producing Hazardous and Toxic Waste (B3) listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222.. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).
- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities was already aware that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, intentionally did not carry out actions that were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environment damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA, did not disposeof and placetailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:
  - The liquid part of the tailings become directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings also spread vertically and horizontally;
  - The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

  and the two phenomena above could endanger public safety and people's lives.
- That Accused II, RICHARD BRUCE NESS, as President Director of PT NMR, has the duty and bears the responsibility for supervising, controlling and instructing his subordinates to carry out duties in accordance with the prevailing provisions, whether those provisions have been stipulated by the company or under the prevailing laws and regulations in Indonesia.
- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, have been found is have a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:
  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.

- Hg : 5 µg/l.

Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

- pH : 6-9 mg/l.
- As (III) : 0.5 mg/l.
- CN WAD : 0.5 mg/l.
- CN Free : 0.5 mg/l.
- Hg : 0.008 mg/l.
- Cu : 1.0 mg/l.
- Fe : 3.0 mg/l.

The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

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- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).

- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).
- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
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- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).

- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).

- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l).
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l).
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).
- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).

- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

➢ As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation.

- That subsequently, pursuant to the Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of

North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.
4. The result of the ERA Study is reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.
5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

1. The study protocol did not conform with the normal ERA procedure;
2. The quality of data used was insufficient;
3. The data used did not represent seasonal variation; and
4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

That because Accused I, PT. NEWMONT MINAHASA RAYA, did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out tailings dumping into the sea from the year 2001 up to 2004 without possessing a permit.

- That Accused II as the President Director of PT. NMR, apparently did not take any action to prevent the increase of some of the parameters as mentioned-above which exceeded the stipulated quality standards. Accused II was also not serious in taking action to ensure that PT NMR possessed a permit to dispose of its waste, moreover

Accused II who knew that PT. NMR had not obtained a permit to dump tailings into the sea, allowed/did not give any instructions to stop the dumping of tailings into the sea by PT. NMR.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004 the conclusions of which are:

  1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standard for Sea Water in respect of Marine Biota.
  2. Tailings of Accused I, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  3. Sludge from sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
  4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
  5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

The actions of the Accused are as meant in and punishable under Article 43 paragraph (1) of Law Number 23 of 1997.

FURTHER SUBSIDIARY

---------- That the Accused, Accused II RICHARD BRUCE NESS as President Director of PT. NMR, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the

relative competence [jurisdiction] of the District Court of Tondano, is moved to the District Court of Manado; because of his negligence, committed an act that resulted in environmental pollution and/or environmental damage; the action was committed by Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company operating in the business field of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and recorded as an industry producing Hazardous and Toxic Waste (B3) listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).
- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities already knew that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.
- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, because of its negligence did not carry out actions that were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environmental damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA, did not dispose of and place tailings into the sea (which is an environmental media) below the Thermocline layer (a layer within a body

of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

- The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings also spread vertically and horizontally;
- The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

causing pollution and/or damage to the environment, such as the decrease in the quality of sea water, causing it to no longer function appropriately.

- That Accused II, RICHARD BRUCE NESS, as President Director of PT NMR, has the duty and bears the responsibility for supervising, controlling and instructing his subordinates to carry out duties in accordance with the prevailing provisions, whether those provisions have been stipulated by the company or under the prevailing laws and regulations in Indonesia.
- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

  Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

  - pH : 6-9 mg/l.
  - As (III) : 0.5 mg/l.
  - CN WAD : 0.5 mg/l.
  - CN Free : 0.5 mg/l.
  - Hg : 0.008 mg/l.

- Cu : 1.0 mg/l.
- Fe : 3.0 mg/l.

The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

- October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
- October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
- November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).

- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).

- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
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- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
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So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation.

- That pursuant to the Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA is allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is to be reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

- That pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay, Accused I, PT. NEWMONT MINAHASA RAYA, completed the ERA study on 11 January 2001 and BAPEDAL discussed the study, involving experts from the Research and Development Centre for Oceanology (P3O) of the Indonesian Institute of Science (LIPI), Universitas Indonesia and representatives of the relevant agencies. That the environmental experts and BAPEDAL experts concluded that the ERA study of Accused I, PT. NEWMONT MINAHASA RAYA, could not yet be accepted because it contained weaknesses, among other things:

1. The study protocol did not conform with the normal ERA procedure;
2. The quality of data used was insufficient;
3. The data used did not represent seasonal variation; and
4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out the ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out the dumping of tailings into the sea from the year 2001 up to 2004 without possessing a permit.

- That Accused II as the President Director of PT. NMR, apparently did not take any action to prevent the increase of some of the parameters as mentioned-above which exceeded the stipulated quality standards. Accused II was also not serious in taking action to ensure that PT NMR possessed a permit to dispose of its waste, moreover Accused II who knew that PT. NMR had not obtained a permit to dump tailings into the sea, allowed/did not give any instructions to stop the dumping of tailings into the sea by PT. NMR.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination of the Forensic Center of the Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004, the conclusions of which are:

    1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standard for Sea Water in respect of Marine Biota.
    2. The tailings of the Accused I, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
    3. Sludge from sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
    4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
    5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

- That because of the pollution committed by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and in fact, the condition of the Dusun Buyat area is no longer suitable as a dwelling place, causing the people of Dusun Buyat to relocate elsewhere.

The actions of the Accused are as meant in and punishable under Article 42 paragraph (1) of Law Number 23 of 1997.

FURTHER MORE SUBSIDIARY

---------- That the Accused, Accused II RICHARD BRUCE NESS as President Director of PT. NMR, in October 1997 up until 2004, or within a period of time which can no longer be determined for certain but at least within the time frame between October 1997 and 2004, in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan or at least in other places that come under the jurisdiction of the Tondano District Court, however based on the Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number : KMA/033/SK/IV/2005 dated 25 April 2005, the place of trial which should have been within the relative competence [jurisdiction] of the District Court of Tondano, is moved to the District

Court of Manado; in contravention of the prevailing laws and regulations, because of his negligence released or disposed of substances, energy, and/or other hazardous or toxic components onto or into the soil, into the air, or into the surface water, where he knew or had grounds to have foreseen that such action could cause environmental pollution and/or environmental damage or endanger public health or people's lives; that action was committed by the Accused doing the following:

- That Accused I, PT. NEWMONT MINAHASA RAYA, is a company operating in the business field of mining, producing gold, under a Contract of Work between the Government of the Republic of Indonesia and PT. Newmont Minahasa Raya Number: B-43/Pres/11/1986 dated 6 November 1986, and recorded as an industry producing Hazardous and Toxic Waste (B3) listed in Government Regulation Number 85 of 1999 in conjunction with Government Regulation Number 18 of 1999 on the Management of B3 Waste, under waste code D222. The chemical substance used by Accused I, PT. NEWMONT MINAHASA RAYA, to produce gold, among other things, is Cyanide (Cn), and the tailing waste produced contains, among other things, Mercury (Hg) and Arsenic (As).

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its business activities already knew that Article 14 paragraph (1) of Law Number 23 of 1997 on the Management of the Environment states *"To guarantee the sustainability of functions of the environment, every business and/or activity must not violate the quality standards and standard criteria in respect of environmental damage"*; and Article 16 paragraph (1) states *"Every responsible party of a business and/or activity must manage wastes deriving from such business and/or activity"*.

- That Accused I, PT. Newmont Minahasa Raya, in carrying out its production activities in Desa Ratatotok Selatan, Kecamatan Ratatotok, Kabupaten Minahasa Selatan, because of its negligence did not carry out actions that were supposed to be carried out to guarantee the preservation of the functions of the environment and did not properly manage wastes originating from its business and/or activities in order to prevent environment damage and pollution as meant in Article 21 paragraph (1) of Law Number 5 of 1994 on Industries, this is obvious because Accused I, PT. NEWMONT MINAHASA RAYA. did not dispose of and place tailings into the sea

(which is an environmental media) below the Thermocline layer (a layer within a body of water indicated by a great increase in temperature gradient), but rather in a mixed layer, resulting in 2 phenomena, namely:

- The liquid part of the tailings became directly diffused by waves, currents, and tides, such that the heavy metal contents within the liquid tailings spread vertically and horizontally;
- The solid part of the tailings could still be diffused by waves, currents, and tides, thus its heavy metal contents could also be separated from the solid part and dissolved into the water and to spread;

and the two phenomena above could endanger public safety and people's lives.

- That Accused II, RICHARD BRUCE NESS, as President Director of PT NMR, has the duty and bears the responsibility for supervising, controlling and instructing his subordinates to carry out duties in accordance with the prevailing provisions, whether those provisions have been stipulated by the company or under the prevailing laws and regulations in Indonesia.

- That Accused I, PT. Newmont Minahasa Raya which has been operating from 1996 up to 2004 has routinely provided reports to the Department of Mines and Energy/DESDM and the State Ministry of the Environment regarding its Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). In the RKL and RPL reported by Accused I, PT. NEWMONT MINAHASA RAYA, a few parameters of detoxified tailings have been found to have exceeded the quality standards stipulated by Decree of the Minister of the Environment No.Kep-51/MENLH/10/1995, Appendix C, namely:

  - CN : 0.5 mg/l.
  - AS : 0.5 mg/l.
  - Hg : 5 µg/l.

  Then as of July 2000, the Quality Standards for tailings pursuant to a Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000, namely:

  - pH : 6-9 mg/l.
  - As (III) : 0.5 mg/l.
  - CN WAD : 0.5 mg/l.
  - CN Free : 0.5 mg/l.
  - Hg : 0.008 mg/l.
  - Cu : 1.0 mg/l.

- Fe : 3.0 mg/l.

The detoxified tailings that have been reported by Accused I PT. NEWMONT MINAHASA RAYA in the RKL and RPL are:

- October 1997, CN-WAD exceeded the quality standard (measurement result: 0.52 mg/l).
- October 1997, As exceeded the quality standard (measurement result: 2.11 mg/l).
- November 1997, CN-WAD exceeded the quality standard (measurement result: 0.83 mg/l).
- November 1997, As exceeded the quality standard (measurement result: 1.88 mg/l).
- December 1997, CN-WAD exceeded the quality standard (measurement result: 0.66 mg/l).
- December 1997, As exceeded the quality standard (measurement result: 1.58 mg/l).
- January 1998, As exceeded the quality standard (measurement result: 1.18 mg/l).
- February 1998, As exceeded the quality standard (measurement result: 1.70 mg/l).
- March 1998, CN-WAD exceeded the quality standard (measurement result: 1.23 mg/l).
- March 1998, As exceeded the quality standard (measurement result: 1.88 mg/l).
- April 1998, As exceeded the quality standard (measurement result: 1.41 mg/l).
- May 1998, CN-WAD exceeded the quality standard (measurement result: 1.53 mg/l).
- May 1998, As exceeded the quality standard (measurement result: 1.49 mg/l).
- June 1998, CN-WAD exceeded the quality standard (measurement result: 0.80 mg/l).
- June 1998, As exceeded the quality standard (measurement result: 1.63 mg/l).
- July 1998, CN-WAD exceeded the quality standard (measurement result: 0.73 mg/l).
- July 1998, As exceeded the quality standard (measurement result: 1.73 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.00 mg/l).
- August 1998, As exceeded the quality standard (measurement result: 1.39 mg/l).
- September 1998, CN-WAD exceeded the quality standard (measurement result: 0.75 mg/l).
- September 1998, As exceeded the quality standard (measurement result: 2.13 mg/l).
- September 1998, Hg exceeded the quality standard (measurement result: 8.65 µg/l).
- November 1998, As exceeded the quality standard (measurement result: 2.05 mg/l).
- December 1998, As exceeded the quality standard (measurement result: 1.30 mg/l).
- January 1999, As exceeded the quality standard (measurement result: 1.13 mg/l).
- February 1999, As exceeded the quality standard (measurement result: 0.74 mg/l).

- March 1999, As exceeded the quality standard (measurement result: 1.00 mg/l).
- May 1999, As exceeded the quality standard (measurement result: 1.11 mg/l).
- June 1999, As exceeded the quality standard (measurement result: 1.14 mg/l).
- July 1999, As exceeded the quality standard (measurement result: 0.90 mg/l).
- August 1999, As exceeded the quality standard (measurement result: 2.42 mg/l).
- September 1999, As exceeded the quality standard (measurement result: 2.23 mg/l).
- October 1999, As exceeded the quality standard (measurement result: 2.37 mg/l).
- November 1999, As exceeded the quality standard (measurement result: 2.13 mg/l).
- December 1999, As exceeded the quality standard (measurement result: 0.92 mg/l).
- January 2000, As exceeded the quality standard (measurement result: 1.54 mg/l).
- February 2000, As exceeded the quality standard (measurement result: 1.55 mg/l).
- March 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- April 2000, As exceeded the quality standard (measurement result: 1.58 mg/l).
- May 2000, As exceeded the quality standard (measurement result: 1.36 mg/l).
- June 2000, As exceeded the quality standard (measurement result: 1.08 mg/l).
- 22 August 2000, Fe exceeded the quality standard (measurement result: 20.0 mg/l).
- 30 August 2000, Fe exceeded the quality standard (measurement result: 0.7 mg/l).
- 30 August 2000, Hg exceeded the quality standard (measurement result: 132.8 µg/l).
- 30 August 2000, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 August 2000, Fe exceeded the quality standard (measurement result: 3.4 mg/l).
- 1 September 2000, Hg exceeded the quality standard (measurement result: 30.6 mg/l).
- 1 September 2000, Cu exceeded the quality standard (measurement result: 1.5 mg/l).
- 2 September 2000, Cu exceeded the quality standard (measurement result: 3.3 mg/l).
- 03 September 2000, Cu exceeded the quality standard (measurement result: 2.3 mg/l).
- 14 September 2000, Cu exceeded the quality standard (measurement result: 1.3 mg/l).
- 22 September 2000, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 23 September 2000, Cu exceeded the quality standard (measurement result: 1.7 mg/l).
- 8 January 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2001, Fe exceeded the quality standard (measurement result: 99.1 mg/l).
- 28 January 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 07 February 2001, Fe exceeded the quality standard (measurement result: 7.8 mg/l).
- 21 February 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 22 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).
- 23 February 2001, Hg exceeded the quality standard (measurement result: 18.4 µg/l).

- 10 March 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 30 March 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 31 March 2001, Hg exceeded the quality standard (measurement result: 27.7 µg/l).
- 4 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 4 July 2001, Fe exceeded the quality standard (measurement result: 83.2 mg/l).
- 5 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 5 July 2001, Fe exceeded the quality standard (measurement result: 101.8 mg/l).
- 9 July 2001, CN-WAD exceeded the quality standard (measurement result: 1.0 mg/l).
- 11 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 19 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 22 July 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 24 July 2001, Cu exceeded the quality standard (measurement result: 3.1 mg/l).
- 26 July 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 3 August 2001, As 3+ exceeded the quality standard (measurement result: 0.69 mg/l).
- 3 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 4 August 2001, As 3+ exceeded the quality standard (measurement result: 0.81 mg/l).
- 4 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 5 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 6 August 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 6 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 7 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 7 August 2001, Fe exceeded the quality standard (measurement result: 10.6 mg/l).
- 8 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 8 August 2001, Fe exceeded the quality standard (measurement result: 9.4 mg/l).
- 9 August 2001, Fe exceeded the quality standard (measurement result: 11.5 mg/l).
- 10 August 2001, Fe exceeded the quality standard (measurement result: 10.3 mg/l).
- 11 August 2001, Cu exceeded the quality standard (measurement result: 1.2 mg/l).
- 11 August 2001, Fe exceeded the quality standard (measurement result: 6.0 mg/l).
- 11 August 2001, Hg exceeded the quality standard (measurement result: 3.1 µg/l)
- 12 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 12 August 2001, Hg exceeded the quality standard (measurement result: 24.7 µg/l).
- 13 August 2001, Fe exceeded the quality standard (measurement result: 6.1 mg/l).
- 13 August 2001, Hg exceeded the quality standard (measurement result: 26.6 µg/l)
- 14 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 August 2001, Fe exceeded the quality standard (measurement result: 6.4 mg/l).

- 14 August 2001, Hg exceeded the quality standard (measurement result: 26.2 µg/l).
- 15 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 15 August 2001, Fe exceeded the quality standard (measurement result: 7.0 mg/l).
- 16 August 2001, Fe exceeded the quality standard (measurement result: 3.6 mg/l).
- 17 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 18 August 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 24 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 24 August 2001, Cu exceeded the quality standard (measurement result: 2.9 mg/l).
- 27 August 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 13 October 2001, Hg exceeded the quality standard (measurement result: 14.6 µg/l).
- 14 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 19 October 2001, Hg exceeded the quality standard (measurement result: 10.5 µg/l).
- 24 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 26 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 28 October 2001, Cu exceeded the quality standard (measurement result: 3.0 mg/l).
- 28 October 2001, Fe exceeded the quality standard (measurement result: 3.5 mg/l).
- 30 October 2001, CN-WAD exceeded the quality standard (measurement result: 1.1 mg/l).
- 31 October 2001, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 16 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 17 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 21 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.9 mg/l).
- 23 January 2002, CN-WAD exceeded the quality standard (measurement result: 0.6 mg/l).
- 14 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.7 mg/l).
- 15 February 2002, Hg exceeded the quality standard (measurement result: 28.5 µg/l).
- 19 February 2002, CN-WAD exceeded the quality standard (measurement result: 0.8 mg/l).
- 15 January 2004, Cu exceeded the quality standard (measurement result: 2.42 mg/l).
- 19 January 2004, Cu exceeded the quality standard (measurement result: 2.16 mg/l).

In respect of the sea water quality standard, that is based on Appendix VIII Decree of the Minister of the Environment Number: Kep-02/MENKLH/1/88 dated 19 January 1988, among other things:

- As: 0.01 mg/l.

However, Accused I, PT. NMR reported the following:

- 16 October 1997, As exceeded the quality standard (measurement result: 24.5 µg/l).
- 19 July 1998, As exceeded the quality standard (measurement result: 26.4 µg/l).
- 22 January 1999, As exceeded the quality standard (measurement result: 22.3 µg/l).

So that based on the RKL/RPL Implementation Evaluation Report prepared by the State Ministry of the Environment, the B3 waste of Accused I, PT. NEWMONT MINAHASA RAYA was not properly reduced because the end result of the detoxification exceeded the quality standards.

- That Article (18) of Government Regulation Number 19 of 1999 regarding the Control of Marine Pollution and or Destruction requires that disposal of B3 waste must be the subject of a permit from the Minister, so that Accused I, PT. NEWMONT MINAHASA RAYA which has in its operations disposed of B3 waste, should have complied with this regulation. That subsequently, pursuant to Letter of the Minister of the Environment/Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Disposal of Tailings into Buyat Bay (signed by Dr. SONNY KERAF the State Minister for the Environment/the Head of Bapedal), Accused I PT. NEWMONT MINAHASA RAYA was allowed to dispose of tailings into Buyat Bay, subject to the following conditions:

1. The tailings disposed of by PT. Newmont Minahasa Raya to Buyat Bay at a rate of 5,000 m3/day must meet the following quality standards:

Parameters	Concentration (mg/l)
PH	6-9
As (III)	0.5
CN-WAD	0.5
CN Free	0.5
Hg	0.008
Cu	1.0
Fe	3.0

2. PT. Newmont Minahasa Raya must carry out an Ecological Risk Assessment (ERA) study in respect of the disposal of tailings into Buyat Bay which is to involve the relevant agencies, among others: the Office of the State Minister for the Environment/Bapedal, Department of Mines and Energy, the Governor of North Sulawesi Province, Bupati Minahasa, Bupati Bolaang Mongondow, the Regional Office of the Department of Mines and Energy in North Sulawesi Province, Non Governmental Organisations (NGOs), Universities and local Community Figures.

3. The Risk Assessment Study must be completed by PT. Newmont Minahasa Raya within a period of 6 (six) months as from the date of issue of this letter.

4. The result of the ERA Study is to be reported periodically (at least once a month) to the State Minister for the Environment/the Head of Bapedal with copies to the

Minister of Mines and Energy, the Governor of North Sulawesi Province and other related agencies.

5. Other information regarding quality standards and disposal of tailings into Buyat Bay by PT. Newmont Minahasa Raya will be stipulated on the basis of the results of the Risk Assessment Study mentioned in point 3.

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  1. The study protocol did not conform with the normal ERA procedure;
  2. The quality of data used was insufficient;
  3. The data used did not represent seasonal variation; and
  4. The agencies that were required to be involved pursuant to Letter of the State Minister for the Environment/the Head of Bapedal No.B-1456/BAPEDAL/07/2000 dated 11 July 2000 regarding Tailings Disposals into Buyat Bay, were not involved.

  That because Accused I, PT. NEWMONT MINAHASA RAYA did not meet the requirements when carrying out its ERA study, the State Minister for the Environment/the Head of Bapedal did not issue a permit to dump tailings into the sea, nonetheless Accused I, PT. NEWMONT MINAHASA RAYA continued to carry out tailings dumping into the sea from the year 2001 up to 2004 without possessing a permit.

- That Accused II as the President Director of PT. NMR, apparently did not take any action to prevent the increase of some of the parameters as mentioned-above which exceeded the stipulated quality standards. Accused II was also not serious in taking action to ensure that PT NMR possessed a permit to dispose of its waste, moreover Accused II who knew that PT. NMR had not obtained a permit to dump tailings into the sea, allowed/did not give any instructions to stop the dumping of tailings into the sea by PT. NMR.

- That the tailings disposed of, although detoxified, continued to exceed the stipulated quality standards and the dumping of tailings into the sea without a permit has caused environmental damage and pollution as indicated by Minutes of Examination

of the Center of Forensic of Criminology Laboratory of Police Headquarters Laboratory No.4171/KTF/2004 dated 27 September 2004, the conclusions of which are:

1. The samples of seawater in Buyat Bay exceeded the quality standard pursuant to appendix III Decree of the Minister of Environment Number: 51 of 2004 on the Quality Standard for Sea Water in respect of Marine Biota.
2. Tailings of Accused I, PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
3. Sludge from the sediment pond of Accused I PT NEWMONT MINAHASA RAYA reduced the quality of the seawater in Buyat Bay.
4. Samples of Marine Biota from Buyat Bay indicated Mercury (Hg) and Arsenic (As) contamination.
5. The community at Buyat Village has been contaminated with Mercury (Hg) and Arsenic (As).

- That because of the pollution conducted by Accused I, PT. Newmont Minahasa Raya, the people of Dusun Buyat experienced itchiness and in fact, the condition of the Dusun Buyat area is no longer suitable as a dwelling place, causing the people of Dusun Buyat to relocate elsewhere.

The actions of the Accused are as meant in and punishable under Article 44 paragraph (1) of Law Number 23 of 1997.

Tondano, July 2005
PUBLIC PROSECUTOR

[signed]

ROBERT ILAT, SH
JUNIOR PROSECUTOR NIP.230020449