

May 16, 2001

Roland Semjanovs
Acting Executive Director
MVEIRB

Re: BHP Sable, Pigeon and Beartooth Kimberlite Pipes Environmental Assessment

Dear Mr. Semjanovs,

I am writing to express the concerns of the Canadian Parks and Wilderness Society - Northwest Territories Chapter over the interpretation of the MVRMA being used by the MVEIRB as a result of letters from BHP Diamonds and the Minister of DIAND.

A letter dated March 2, 2001 from J.D. Excell, of BHP to DIAND Minister Nault regarding the Board's BHP decision states in part that:

For reasons outlined below we respectfully submit that the significant adverse impact found by the Review Board is outside the scope of the EA and that all 62 of its Recommendations (sic) are ultra vires its jurisdiction under the Act.

This statement refers to section 128 (1)(b)(ii) of the MVRMA and apparently *interprets* it to mean that where the Board finds that an activity is not likely to result in significant adverse environmental impacts, that the Board cannot then recommend that the permit be subject to conditions designed to minimize the environmental impacts it will cause.

In a letter dated April 12, 2001 from the DIAND Minister to the MVEIRB, the Minister apparently concurs with this interpretation when the letter states:

With respect to the 60 recommendations, the Board did not make a finding of significant adverse impacts regarding each of the matters addressed. Consequently, it is not open to the responsible Ministers to adopt these Board recommendations.

In fact, the MVRMA does not state that the MVEIRB cannot recommend permits be made subject to conditions when there is a finding that the activity is not likely to cause a significant adverse environmental impact, or that the Minister cannot adopt such recommendations. This is an interpretation on the part of BHP, and contradicts of the purposes and guiding principles of the environmental assessment portion of the legislation, as set out in sections 114 and 115.

If this interpretation and use of the act is maintained, all activities found not to have significant impacts cannot have conditions put on them by the MVEIRB, which would likely result in a maximum, rather than a minimum, environmental impact from each activity. This in turn would increase the cumulative impacts from all activities, which are not being monitored, assessed or managed in the NWT, partly due to the fact that Part 6 of the MVRMA has not yet been implemented, and partly because the NWT lacks a functioning Cumulative Effects Assessment and Management Framework.

This interpretation has already negatively affected an MVEIRB decision in the case of Canadian Zinc application MV2000C0030 for a 6-7 hole exploration drilling program, which was found

not likely to cause significant adverse environmental impacts. In the environmental assessment report, the Board supported several mitigative actions put forward by various government agencies which would lessen the impacts of the drilling program and provide more knowledge about the impacts of the activity on the environment. However, these mitigative actions were not set as conditions of the permit, because of the Minister's current interpretation of the MVRMA.

We submit that the interpretation taken by BHP and the DIAND Minister directly contradicts the spirit and purpose of the MVRMA, would result in increased cumulative environmental impacts in the Mackenzie Valley, and therefore should not become the operating procedure for the MVEIRB. We ask that you bring these points forward in your discussions with the Minister regarding the BHP decision.

Sincerely,

Greg Yeoman
Conservation Director
CPAWS-NWT