PROJECT-SPECIFIC ENVIRONMENTAL AGREEMENTS IN THE NWT: REVIEW OF ISSUES AND OPTIONS

Prepared for
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EXECUTIVE SUMMARY

This paper was prepared by the Canadian Institute of Resources Law at the request of the Department of Indian Affairs and Northern Development (DIAND). It is based primarily on a series of in-depth interviews and focuses on the experience with the BHP and Diavik environmental agreements in the Mackenzie Valley portion of the NWT. The paper is intended to assist DIAND as it considers, in consultation with other interested parties, the appropriateness of negotiating environmental agreements for future projects and the opportunities to improve on the BHP and Diavik agreements in the event that these models continue to be used.

The paper begins with a brief review of the rationale for the BHP and Diavik agreements, their key components, and the functional analysis used in later sections. The overarching rationale identified by interviewees is to address deficiencies in the regulatory regime and meet specific objectives of the parties. Four principal functions were discussed in the interviews.

First, the BHP and Diavik agreements create project-specific institutions. Interviewees commented on the appropriate membership of these organizations, the disadvantages of a proliferation of project-specific institutions, and the need to fund Aboriginal participation. Two broad roles for these institutions were identified by interviewees: a community-based forum and a source of independent and expert oversight. Many interviewees supported the establishment of a community-based forum, although there were some differences concerning its precise role and composition. Most interviewees who commented on this issue felt that the regulatory regime was not well suited to perform this function. There was divided opinion among interviewees about the need for new project-specific (or regional) institutions to provide independent and expert oversight. Some interviewees strongly supported this role, while others argued that it could be addressed through the regulatory regime. Three alternatives to the BHP and Diavik institutional model were identified: (1) amalgamate the two existing institutions into a regional body with a similar mandate; (2) establish a community-based forum, while leaving aspects of independent and expert oversight to be addressed through the enforcement, monitoring and environmental auditing components of the regulatory regime; and (3) rely entirely on the regulatory regime and create no new institutions in the Mackenzie Valley.

The second function of the BHP and Diavik agreements is to address regulatory issues. Interviewees identified several potential regulatory gaps that could be filled by environmental agreements. They also noted the use of these agreements to implement commitments made by proponents – notably in the environmental impact assessment process – that may not have a 'home' in regulatory instruments. Finally, transboundary issues were raised. The principal options for addressing regulatory issues that were identified by interviewees are to improve the regulatory regime, negotiate framework agreements among regulators, and negotiate narrowly-focused project-specific agreements.

The consolidation of regulatory and reporting requirements is the third broad function. Interviewees commented on the value of a comprehensive enumeration of requirements and consolidated annual reports.

Some interviewees also noted the symbolic value of environmental agreements. One option is for regulators to establish a generic framework to consolidate regulatory and reporting requirements. Another approach is to use 'key-stone' environmental agreements for major projects.

The fourth broad function concerns security deposits. Opinions differed among interviewees about the appropriate role of environmental agreements in this area. The need for overarching and life-of-project security arrangements for major projects was, however, widely recognized. Four broad suggestions were made by interviewees. The first is to establish a detailed policy regarding security requirements in the NWT. Second, a hierarchy of security requirements could be defined, perhaps providing for ministerial oversight through the negotiation of the land lease. Third, coordination could be improved among the decision-makers with authority to require security deposits. Fourth, a lead agency could be identified in this area.

Several additional issues were raised by interviewees and are briefly examined in the paper. These issues are: general criteria for the use of environmental agreements; drafting issues; dispute resolution; the negotiation process; the legal and policy basis for these agreements; and the relationship between the use of environmental agreements and the overall operation of the regulatory regime.

The paper concludes by noting three general points. First, many interviewees stated that they still see a need for environmental agreements of some sort in the Mackenzie Valley. Second, interviewees suggested a number of regulatory and other options for performing many of the principal functions of the BHP and Diavik agreements. Finally, a number of interviewees argued that the future use of project-specific environmental agreements has important implications for the evolution and maturing of the regulatory regime in the Mackenzie Valley.

DISCLAIMER

Research for this paper involved in-depth interviews and a review of relevant documents. The information presented here is based on this research. This paper is not intended as a statement of the views or policies of DIAND. Nothing in this paper should be interpreted as a legal opinion.

1. INTRODUCTION

The negotiation of project-specific environmental agreements is one component of the rapidly evolving framework for natural resource and environmental management in the Mackenzie Valley[1] region of the NWT. The recent history of environmental agreements begins with BHP's Ekati diamond mine. Although environmental agreements had been used before in the NWT and elsewhere in Canada, the BHP Environmental Agreement was innovative in its negotiation process and substantive provisions.[2] It was also widely seen as establishing an important precedent for the negotiation of environmental agreements for major mining projects in the NWT. Building on this precedent, an environmental agreement was negotiated for the Diavik diamond project. This agreement differed from the BHP model in certain respects, notably Aboriginal participation as full signatories and a somewhat different institutional model for project oversight and monitoring.

There have been important changes in the NWT since the BHP Environmental Agreement was negotiated. The *Mackenzie Valley Resource Management Act* (MVRMA) is now in force and there is some practical experience with the BHP and Diavik agreements. Given this context, the requirement to review these agreements on a periodic basis[3], and the new projects poised to enter the regulatory process, the Department of Indian Affairs and Northern Development (DIAND) asked the Canadian Institute of Resources Law (CIRL) to review the recent experience with environmental agreements in the NWT. This review is intended to assist DIAND as it considers, in consultation with other interested parties, the appropriateness of negotiating environmental agreements for future projects and the opportunities to improve on the BHP and Diavik agreements in the event that these models continue to be used.

The results of CIRL's review are presented in this discussion paper. It focuses on the BHP and Diavik agreements and the future for these agreements and others of this type within the Mackenzie Valley. The paper does not consider the statutory and policy context for environmental agreements in the Inuvialuit Settlement Region, Nunavut, or Yukon. The experience with other environmental agreements, some of which may differ in important ways from the BHP and Diavik models, is also beyond the scope of this paper.

The information and analysis in this paper are based primarily on in-depth interviews with

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[1] The Mackenzie Valley is defined in the *Mackenzie Valley Resource Management Act* as that portion of the Northwest Territories south of the Inuvialuit Settlement Region, not including Wood Buffalo National Park.

[2] For a discussion of this agreement in the context of the project review, regulatory and negotiated processes leading to the approval of BHP's Ekati mine, see: Canadian Institute of Resources Law, *Independent Review of the BHP Diamond Mine Process* (Ottawa: DIAND, 1997).

[3] BHP Environmental Agreement, article 15.2; Diavik Environmental Agreement, article 17.2.

individuals from government departments (federal and territorial), boards established under the MVRMA, Aboriginal organizations, the mining industry, environmental non-governmental organizations, and the two institutions established pursuant to the BHP and Diavik agreements.[4] These agreements and relevant statutes and regulations were also reviewed.

The interviews were relatively unstructured, beginning with open-ended questions about the rationale for the BHP and Diavik agreements, the experience with these agreements, and the need for this type of agreement in the future. Most interviews then focused on the functions of these agreements. Although interviewees were given a project description and list of issues in advance, the number and complexity of these issues and the diverse backgrounds of the people interviewed made it impractical to impose a standard format on all interviews. All issues were not addressed in each interview and it was impossible to provide each interviewee with an opportunity to respond to all of the concerns and comments raised by others.

Given the scope of the topic and the range of views expressed by interviewees, this paper does not attempt to present a full discussion of all perspectives on all issues. Its objective is to provide a structured analysis that highlights the principal issues and options that appear to the author, on the basis of the interviews, to be central to any discussion of existing and future environmental agreements in the NWT. The author recognizes that some interviewees may feel that their views are not fully captured in this paper or that certain points warrant greater (or lesser) emphasis. Interviewees can raise these issues in comments on the draft paper and by submitting their views directly to DIAND.

The paper is organized as follows. Following introductory comments in Section 1, the rationale for the BHP and Diavik agreements, their content, and the functional analysis used in the paper are briefly described in Section 2. Sections 3 to 6 examine the creation of new institutions, regulatory functions, the consolidation of regulatory and reporting requirements, and security deposits. Section 7 addresses discrete issues not related to specific functions. Brief concluding comments are found in Section 8.

2. THE BHP AND DIAVIK ENVIRONMENTAL AGREEMENTS

This section reviews the rationale for the BHP and Diavik agreements, highlights their key components,[5] and outlines the functional analysis used in this paper.

2.1 Rationale

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[4] A list of interviewees is found in Appendix 1.

[5] A detailed analysis of these agreements is not included here. Copies of these agreements are available from DIAND in Yellowknife: Environment and Conservation, Administrative Support – (867) 669-2589.

The purpose sections of the BHP and Diavik agreements and the comments of interviewees suggest several reasons why these agreements were negotiated. In general, they were intended to ensure that the environment, archaeological and cultural resources, and the land-based economy of Aboriginal people are adequately protected. Particular purposes identified by interviewees were to:

- implement proponent's commitments and recommended mitigation measures from the environmental impact assessment (EIA) that were not captured in regulatory processes;[6]
- fill gaps in the regulatory regime;
- review project monitoring;
- oversee the proponent's compliance with regulatory requirements and the overall environmental regulation and management of the project;
- establish a mechanism for Aboriginal communities to be informed about the project and make their concerns known to the proponent and regulators;
- provide a forum for the parties to address issues that arise over the life of the project;
- establish a comprehensive framework for environmental management, monitoring and reporting requirements;
- provide an alternative and more flexible means of establishing certain terms and conditions that might otherwise be seen as 'encumbering' the land lease;[7] and
- provide a 'life-of-project' mechanism for addressing longer term issues of environmental management (e.g., security deposits).

The overarching rationale identified by interviewees is to address deficiencies in the regulatory regime and meet specific objectives of the parties.

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[6] For environmental assessments under the EARP Guidelines Order and the *Canadian Environmental Assessment Act*, this rationale for environmental agreements related to the 'superadded' duty of the responsible authority to ensure implementation of necessary mitigation measures. This function is not, it appears, carried forward under the *Mackenzie Valley Resource Management Act* since decision makers are explicitly limited to implementing terms and conditions to the extent of their authority.

[7] This reason was noted for the BHP agreement.

2.2 Components

The BHP and Diavik agreements have many of the same basic elements, although there are some important differences in detail. For present purposes, it is sufficient to highlight the following key components of these agreements:

- **Project-specific institutions** – The agreements create institutions and define their mandates in some detail.[8] Funding for these institutions is largely provided by the companies. The Independent Environmental Monitoring Agency (IEMA) for BHP's Ekati mine has a Board of Directors consisting largely of independent scientific experts appointed by government, BHP and Aboriginal organizations. The Environmental Monitoring Advisory Board (EMAB) for the Diavik project consists of representatives of Aboriginal communities, government and the company.

- **Environmental management plans** – The agreements enumerate environmental management plans that the companies are required to put in place and provide for ministerial review of these plans.

- **Environmental monitoring programs** – Monitoring programs are specified in the agreements, along with provisions for their review and the dissemination of the results. The Diavik agreement provides for Aboriginal involvement in monitoring.

- **Reporting** – The companies are required to submit detailed annual reports pursuant to these agreements. The reports include an overview of operations for the year, a summary of other compliance and monitoring reports, a discussion of actions taken to address compliance problems and other issues, and a summary of operations planned for the next year. The parties have a formal opportunity to comment on the reports.

- **Abandonment and reclamation** – The BHP agreement includes provisions for a closure and reclamation plan. The Diavik agreement refers to reclamation and abandonment requirements established through the regulatory regime.

- **Security deposits** – Both agreements address the posting and administration of security.

- **Environmental compliance and regulatory requirements** – The agreements contain undertakings that the companies will comply with environmental laws, regulations and regulatory instruments. The Diavik agreement provides a mechanism for confirming compliance. The BHP agreement enumerates requirements relating to waste disposal, maintenance of the project site, and the handling of fuel and hazardous chemicals.

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[8] See article 4.2 in both agreements.

- **Archaeological sites** – Both agreements address the protection of archaeological sites.

- **Dispute resolution** – Dispute resolution procedures are included in the agreements.

- **Enforcement** – The agreements are intended to create legally binding obligations. These obligations could be enforced through contractual mechanisms and the agreements also provide for enforcement mechanisms, notably the draw-down of the security deposits.

- **Other topics** – Topics addressed in one or both of these agreements include: traditional knowledge, studies and research, socio-economic effects resulting from environmental change, communication and public access to information, and participation in the NWT Cumulative Effects Assessment and Management Framework. The agreements include interpretation sections, definitions, and standard or 'boilerplate' contractual provisions.

The BHP and Diavik agreements were intended to achieve a number of objectives. Assessing the need for similar agreements in the future requires an examination of their principal functions.

2.3 Functional Analysis

This paper uses a functional analysis to present the principal issues and options identified by interviewees. The discussion of each function is guided by the following questions:

- What is the objective to be achieved and is it important?

- If the objective is important, can it be achieved through the regulatory regime?

- If there is a need for environmental agreements to achieve the objective, what form should these agreements take and how should they be negotiated?

Specific issues and options are identified for each of the functions reviewed below.

The following sections of the paper examine four functions:

- the creation of institutions such as IEMA and EMAB;

- the filling of gaps in the regulatory regime;

- the consolidation of regulatory requirements and annual reporting; and

- the posting of security.

A final section addresses discrete issues not related to specific functions.

3. CREATION OF NEW INSTITUTIONS

Project-specific institutions are established by the BHP and Diavik agreements. As noted above, there are similarities and differences between IEMA and EMAB. A detailed description of their mandates and operations is beyond the scope of this paper. Based on the interviews, the functions of these institutions can be divided into two broad categories:

- a community-based forum for information exchange, Aboriginal oversight, and the identification and possible resolution of issues of concern; and

- independent, expert or 'public' oversight of project monitoring, the proponent's compliance with regulatory requirements, and the regulatory system as a whole.

It appears from the interviews that these categories capture most of the important functions of IEMA and EMAB in a way that highlights important issues and gives rise to several options regarding the future use of environmental agreements. Before turning to these functions, three general issues that were raised in the interviews are briefly noted.

3.1 General Issues

The first general issue concerns the appropriate composition of these agencies, notably the emphasis on community representation or independent expertise. Some interviewees felt that institutions created under environmental agreements should consist primarily of community representatives. Others noted, however, that the most appropriate and effective representatives of communities may not have the specialized expertise or the time to review and comment on technical monitoring reports. Another question raised by some interviewees is whether employees of proponents and government should be members of these agencies. While some interviewees felt that the involvement of these representatives was important for functions such as information exchange and cooperative problem solving, others expressed concern that company and government membership could compromise the independent oversight functions. Several interviewees felt that the debate about composition reflected the difficulty of combining a community-based forum and an independent oversight mechanism into a single body.

The second issue concerns the proliferation of project-specific institutions. No one interviewed for this project supported the creation of a new institution for each major project in the NWT. Most interviewees felt that continued use of some variant of the IEMA or EMAB models should involve a shift from project-specific to regional institutions. There was also some support for merging IEMA and EMAB into a regional body for the Slave Geological Province, although obstacles to this approach were also identified.

A third issue raised in many interviews was the need for funding to permit Aboriginal organizations to participate effectively in any institutional arrangements that may be created. One interviewee noted that it is not sufficient merely for Aboriginal representatives to be present at meetings. His view was that Aboriginal representatives must:

- have the time and expertise to prepare for meetings by reviewing written material and consulting with their communities;
- be able to take an active part in discussions and decision-making;
- effectively transmit information from meetings to communities and Aboriginal leaders; and
- obtain meaningful input in response to that information.

Several interviewees made the point that, if these requirements are not met, representation on boards and agencies has little tangible value and the institutions in question will be unable to achieve the goals that depend on Aboriginal involvement.

3.2 Community-based Forum

Many interviewees saw the need for a mechanism to provide Aboriginal communities with a window into project regulation and management following the completion of project review and the initial regulatory processes. In particular, interviewees suggested that a community-based forum could be used for functions such as:

- information exchange;
- the identification of issues by Aboriginal communities and the communication of their concerns to companies and regulators;
- Aboriginal oversight of project management and regulation;
- cooperative problem solving involving Aboriginal organizations, companies and regulators; and
- building positive relationships among parties with an interest in resource development.

All interviewees did not agree on this full list of functions. Some people argued that a community-based forum should primarily be a vehicle for Aboriginal 'voice' on issues, giving Aboriginal organizations an opportunity to question company and government representatives and communicate concerns and recommendations to them. Other interviewees placed greater emphasis on the community-based forum as a mechanism for identifying and addressing issues of mutual concern and building relationships. It was noted

in several interviews that company and government membership may be inappropriate if the primary purpose is Aboriginal 'voice' and oversight. On the other hand, participation of all parties was seen by some interviewees as essential if a community-based forum is to promote cooperative problem solving.

Most interviewees who commented on this issue felt that it is not easy to establish community-based forums through conventional regulatory instruments. While some interviewees noted that the 'co-management' boards under the MVRMA were intended to increase Aboriginal involvement in project review and regulatory processes, it was also argued that these institutions of public government are not designed as community-based forums along the lines of EMAB. It was also noted that some Aboriginal organizations have expressed opposition to the MVRMA regime. Several interviewees also argued that the particular circumstances of the NWT make it essential that communities have a specific vehicle to raise their concerns. Others suggested that mining companies, government and Aboriginal communities can all benefit from a formal structure for communication, issue identification, and cooperative problem solving.

Most interviewees who addressed this issue felt that primary or sole responsibility for funding such a body should rest with industry. Another option is government core support, with companies paying the costs for meetings on project-specific issues. Most interviewees felt that a body of this type could have a regional focus, with flexibility to address project-specific issues as necessary. However, some interviewees observed that this approach could dilute the project-specific roles currently played by IEMA and EMAB.

Some interviewees argued that a community-based forum may need access to specialized expertise. Two options were noted. One is to create a technical advisory committee, as provided for in the Diavik agreement. A second option is to make use of expertise within companies, governments and Aboriginal organizations, and retain outside consultants as necessary.

3.3 Independent and Expert Oversight

The second broad function of IEMA and EMAB is independent and expert oversight of project monitoring, regulatory compliance, and the overall regulation and environmental management of projects. Measures to ensure effective monitoring of project-specific and cumulative effects were identified by many interviewees as essential for good environmental management. Monitoring was also seen as necessary to assess the effectiveness of regulatory requirements, mitigation measures, and responses to unanticipated environmental problems. The value of overseeing and improving monitoring techniques was also widely recognized by interviewees. The question to be asked in relation to monitoring is whether or not environmental agreements are the appropriate means to deliver the functions assigned to IEMA and EMAB.

This question was also raised by interviewees regarding the other oversight functions of these institutions. The BHP and Diavik agreements contain the identical requirement that the respective institutions

are "to serve as a public watchdog of the regulatory process and the implementation of this Agreement".[9] Interviewees expressed different views on this role. One view was that this type of public watchdog is inappropriate because it duplicates the mandate of regulators, namely to ensure that development is in the public interest. It was argued that a lack of confidence in the ability of regulators to protect the public interest should be addressed by improving the regulatory regime, not by creating a new oversight mechanism and, in effect, conceding that this regime is deficient. Another criticism of the watchdog function in these agreements is that it fosters an adversarial atmosphere and encourages the board or agency in question to distance itself from the parties so as to preserve its independence. This outcome was seen by some interviewees as impeding a cooperative approach to problem solving.

Other interviewees expressed strong support for the independent watchdog function, citing past regulatory failures in the NWT and concerns regarding the new regulatory regime. It was also argued that an expert oversight body could assist companies, regulators, Aboriginal communities and the public at large in identifying and responding to issues of concern. Interviewees who questioned the capacity of existing agencies to regulate large and complex projects with innovative engineering and environmental management systems were especially supportive of establishing an expert and independent watchdog.

Several interviewees suggested that the oversight functions assigned to IEMA and EMAB could be largely or completely carried out through the regulatory regime in the Mackenzie Valley. The oversight of project-specific monitoring is seen by some interviewees as the responsibility of regulators charged with establishing and enforcing regulatory requirements through permits and licences. It was argued that concerns with the ability of regulators to perform this function should be addressed by improving the regulatory regime, not by creating a separate oversight mechanism. Other interviewees expressed doubts that regulatory agencies in the NWT could be relied upon to provide adequate oversight of project-specific monitoring.

Some interviewees noted that Part 6 of the MVRMA provides explicitly for both cumulative impact monitoring and independent environmental audits. The Part 6 monitoring function is seen by some interviewees as complementing, or even including, aspects of project-specific monitoring. It was also argued that independent, project-specific "watchdogs" may not be needed if the regulatory system as a whole is subject to periodic review pursuant to Part 6. Other interviewees questioned the ability of Part 6 to provide the level of oversight that is, in their view, both desirable and currently provided by IEMA and EMAB. Mechanisms for implementing Part 6 are not in place. A discussion of Part 6 and the options for implementing it is beyond the scope of this paper.

3.4 Overview of Options

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[9] BHP Environmental Agreement, article 4.2(b); Diavik Environmental Agreement, article 4.2(c).

The interviews identified are three broad alternatives to project-specific institutions along the lines of IEMA and EMAB. The first is to merge these bodies and create a regional institution that incorporates their mandates and capabilities to the extent possible. Several interviewees pointed to EMAB as a good model. A regional institution could be made up of community, company and government representatives, supported by traditional knowledge and scientific panels. The expertise of IEMA might find a home in the scientific panel. As new projects are approved, they would fall under the umbrella of this regional agency. This approach would avoid the proliferation of project-specific agencies and could combine the strengths of IEMA and EMAB. It would not, however, address the underlying problems with combining the two principal functions of IEMA and EMAB. Variations on this option would involve modifying the mandate and membership of the body.

A second option would focus on some or all of the functions of a community-based forum, notably information exchange, Aboriginal 'voice' and oversight, and cooperative problem solving. Given a relatively effective and efficient regulatory system and implementation of Part 6 of the MVRMA as a mechanism for cumulative impact (and, perhaps, some project-specific) monitoring and environmental audits, environmental agreements might not be needed to perform the independent monitoring and watchdog functions assigned to IEMA and EMAB. A community-based forum could operate on a regional basis, particularly if resource development is fairly homogeneous (e.g., a diamond mining forum for the Slave Geological Province).[10] Several interviewees raised the possibility that a regional body of this type could be expanded to include the full range of land and resource users. Others felt that this enlargement would make the body too cumbersome and would duplicate the roles of regulators and resource managers.

Finally, the desirability of creating additional institutional arrangements through agreements was not universally accepted by interviewees. The argument was made that the principal functions of IEMA and EMAB can and should be addressed through the regulatory regime. One interviewee expressed strong concerns that the creation of new institutions in the Mackenzie Valley, even on a regional basis, would further complicate an already complex environment for resource development and increase demands on all interested parties.

4. REGULATORY FUNCTIONS

The BHP and Diavik agreements do not create new regulatory regimes. The Diavik Agreement explicitly states that it is not intended to duplicate regulatory requirements and affirms the paramountcy of

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[10] The establishment of regional 'operators committees' in Alberta has similar objectives. These committees bring together oil and gas operators, stakeholder representatives and land owners in areas of intensive industrial activity in order to address concerns, exchange information and, ideally, build trust and positive working relationships. The creation of these committees is actively encouraged by the Alberta Energy and Utilities Board.

legislation and regulatory instruments over its provisions.[11] One rationale for these agreements identified by interviewees, however, is to fill gaps in the regulatory regime and to ensure the implementation of undertakings made by proponents that do not have a 'home' in conventional regulatory instruments. Regulation of transboundary issues was also noted as a potential gap. The key question is whether gaps remain in the new regulatory regime that should be addressed through environmental agreements.

4.1 Specific Areas of Concern

The possible regulatory gaps that were most frequently identified by interviewees were wildlife, air quality, and socio-economic issues.[12] One potential gap relating to wildlife is the absence in the NWT legislation of authority to regulate projects in order to protect wildlife. No one who commented on this issue was optimistic that the territorial legislation would be amended in the near future to fill this gap. Some interviewees also argued that wildlife management is complicated by the jurisdictional division between the GNWT's general authority relating to wildlife and DIAND's jurisdiction over issues relating to wildlife habitat. There also appears to be an absence of air quality legislation in the NWT, and several interviewees expressed a concern that socio-economic issues, particularly as raised in the Mackenzie Valley Environmental Impact Review Board's process, may not fit easily within existing regulatory instruments. Interviewees identified no regulatory gaps relating to water.

Interviewees noted that the limited experience to date with the MVRMA regime made it difficult for them to assess the scope of regulatory jurisdiction under the new regime and how that jurisdiction will be exercised. One interviewee noted that the Mackenzie Valley Land and Water Board has broad jurisdiction to attach conditions to land-use permits under section 26(1) of the *Mackenzie Valley Land Use Regulations*. The enumerated powers, it was suggested, appear to allow the Board to regulate most aspects of project operations with a view to protecting the environment. Some interviewees suggested, however, that the Board may be reluctant to play a major role on wildlife issues and that its powers may not extend to wildlife monitoring. Another issue that was raised was whether the inspectors responsible for enforcing permits issued by the Board have the ability in practice to address wildlife management. Other interviewees felt that, in principle at least, the Board has ample authority to address wildlife issues and most or all other areas of concern. Several interviewees noted, however, that the new regime's ability to fill all gaps for major projects remains to be demonstrated in practice.

A final issue relating to wildlife is the need for a holistic approach to regulation and management

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[11] Diavik Environmental Agreement, article 13.

[12] Although both environmental agreements address archaeological sites, this topic was not identified in any of the interviews as a regulatory gap. The Mackenzie Valley Land and Water Board has authority under section 26(1)(j) of the *Mackenzie Valley Land Use Regulations* to attach conditions to land-use permits respecting the "protection of historical and archaeological sites and burial grounds."

given the division of authority between the GNWT and DIAND. Some interviewees saw a useful role for environmental agreements in this area.

The socio-economic aspects of regulation raised by some interviewees are beyond the scope of this project since these issues are not addressed in detail in the BHP and Diavik agreements.[13] The integration of environmental and socio-economic aspects of project regulation was raised in the interviews but is also beyond the scope of this paper.

4.2 Implementation of the Proponent's Undertakings

A second regulatory function of the BHP and Diavik agreements identified by interviewees is to consolidate proponents' undertakings (notably in the course of the EIA), transform them into legally binding commitments, and provide a mechanism to monitor and enforce the companies' compliance with them. To the extent that this function is related to the 'superadded duty' issue under EARP and CEAA, it appears to be no longer a concern under the MVRMA. Nonetheless, some interviewees argued that environmental agreements may still have a useful role in this area.

Concerns about this function were also raised in the interviews. It was noted, for example, that the term "Commitment" is broadly defined in the Diavik agreement and the purpose section states the intention to create a "legally binding" means to ensure that these Commitments are being fulfilled. However, no list of these Commitments is appended to the agreement. At a minimum, it was argued, environmental agreements should be clear about the parties' obligations. Several interviewees also argued that important commitments made by proponents in project review and regulatory processes should be included as conditions in regulatory instruments and enforced through standard regulatory procedures. If the regulatory process is unable to identify and capture undertakings made by the proponent during project review, it was argued, this deficiency should be addressed through changes to regulatory powers, not through environmental agreements. It was also noted that specific commitments to Aboriginal communities that are not appropriate for inclusion in regulatory instruments could be addressed through private impact and benefit agreements or participation agreements.

It appears from the interviews that one way to address this issue is to attach a list of proponent's undertakings to the EIA report and recommendations. This list would identify the undertakings that were considered to be important by the Mackenzie Valley Environmental Impact Review Board. This consolidated list could then be reviewed and potentially incorporated into the conditions for licences and

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[13] Article 8.1 of the Diavik Agreement states that "DDMI [Diavik Diamond Mines Inc.] shall comply with all requirements of the CSR [Comprehensive Study Report] relating to the monitoring and mitigation of potential socio-economic effects resulting from environmental changes."

permits issued by the Mackenzie Valley Land and Water Board and other regulators.[14]

4.3 Transboundary Issues

Transboundary issues are not addressed explicitly in the BHP and Diavik agreements. The Kitikmeot Inuit Association (KIA) was, however, a signatory to the BHP Implementation Protocol and the Diavik agreement and is entitled to appoint members to IEMA and EMAB. Environmental agreements can thus provide Aboriginal organizations from other jurisdictions with a direct voice in establishing requirements for projects, filling a procedural gap that may exist if they lack easy access to the regulatory processes of the jurisdiction where the project is located.

Interviewees who addressed this issue noted that the regionalization of institutions within the NWT and the creation of Nunavut have the inevitable consequence of creating jurisdictional boundaries that cut across ecosystems. Transboundary effects of decision making are therefore a general concern. Regulatory processes can take account of transboundary impacts and grant standing to organizations and individuals from other jurisdictions. It was noted, however, that these measures may not be equivalent to the use of agreements to ensure a direct voice on transboundary issues. One interviewee commented that the effectiveness of regulatory mechanisms depends on the ability of parties from other jurisdictions to take advantage of them and the weight attached to transboundary concerns by decision makers.

4.4 Overview of Options

In the event that regulatory gaps for major projects remain a concern, three principal options were identified by interviewees. First, some interviewees strongly recommended improving the regulatory regime through measures such as:

- legislative amendments to fill gaps (e.g., broadening the regulatory powers under NWT wildlife legislation);
- developing regulatory techniques to give full effect to jurisdiction (e.g., requirements for environmental management plans and monitoring programs in licences and permits);
- strengthening the capacity of regulators (e.g., improving the inspection and enforcement capacity for land-use permits);
- systematically capturing proponents' undertakings through a 'commitment list' at the EIA stage and carrying those undertakings forward into regulatory instruments; and

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[14] Decisions of Alberta's Energy and Utilities Board frequently identify proponents' undertakings and include them as conditions of approval.

- changes in legislation, policy or procedure to ensure that transboundary issues are addressed by decision makers and to provide individuals and organizations from other jurisdictions with effective access to project review and regulatory processes for projects that may adversely affect their interests.

Second, some interviewees suggested that negotiated arrangements among regulators could address gaps and provide comprehensive and harmonized regulatory coverage. These framework agreements could allocate responsibilities in areas of overlapping jurisdiction and provide a basis for cooperation in regulation, monitoring and enforcement at the project level. Procedures to address transboundary issues could also be established in this way.

Finally, some interviewees felt that there may be specific regulatory and environmental management issues that can best be addressed through narrowly-focused, project-specific agreements. For example, a project-specific wildlife management agreement involving a mining company, federal and territorial regulators, and Aboriginal organizations could be negotiated to establish and consolidate the mitigation measures, management plans, access controls and monitoring programs that are needed to minimize a project's impact on wildlife and on those people who rely on hunting and trapping for economic and cultural well-being. One interviewee suggested that the need for agreements of this type should be identified early in the project review and regulatory processes and that negotiations should be relatively uncomplicated.

5. CONSOLIDATION OF REGULATORY AND REPORTING REQUIREMENTS

The use of environmental agreements to provide a holistic or integrated framework for project regulation was discussed in a number of interviews. The BHP and Diavik agreements list environmental management plans and environmental monitoring programs that are required under various regulatory instruments. It was noted in several interviews that this consolidation of requirements mirrors the integrated approach to environmental management adopted internally by mining companies for large projects and provides a single external check-list against which a company's operational environmental management plan can be compared.

Several interviewees also stated that the BHP and Diavik agreements serve a useful role by requiring consolidated and accessible annual reports that describe company operations and plans, summarize results of other reports, and highlight important issues and accomplishments. Some interviewees see consolidated reporting as a way to save time and money where reporting requirements address similar issues but have different time frames or protocols.

5.1 Coordination among Regulators

The first question is whether environmental agreements are necessary to achieve this result. Some interviewees argued that the consolidation of regulatory and reporting requirements should be addressed

by regulators. The basic framework and procedures for consolidation should, it was suggested, be fairly generic once the principal regulators, regulatory instruments and reporting requirements for projects are identified. While the specific requirements for projects may vary, several interviewees argued that prior agreement by regulators to coordinate requirements could eliminate the need to address this issue on a project-by-project basis.

5.2 The Symbolic Value of Environmental Agreements

A few interviewees felt that the signing of a comprehensive, project-specific agreement by the proponent, government and Aboriginal organizations has a symbolic value that is independent of any substantive regulatory changes and procedural advantages. A project-specific environmental agreement, it was suggested, could be seen as a 'key-stone' piece of the overall regulatory structure, signaling that all of the individual components are in place to the satisfaction of the parties and that everyone is committed to ensuring that they work in an efficient, effective and integrated manner. One interviewee noted that environmental agreements for major projects have greater public resonance and instill more confidence that licences and permits. Several others noted the value of symbolic 'hand-shakes' and public affirmations of confidence in environmental management, monitoring and reporting requirements for projects.

5.3 Overview of Options

Interviewees suggested two general alternatives to the consolidation of regulatory and reporting requirements within project-specific agreements of the type used for the BHP and Diavik projects. These options could be used together given agreement among regulators.

The first option is for regulators to establish a generic framework for major projects that requires a comprehensive listing of regulatory requirements (e.g., environmental management and monitoring plans) and the preparation of consolidated annual reports. This arrangement could be implemented by designating a lead regulator or 'single window', or through a memorandum of understanding. It could be formalized in a statutory amendment.

The second option is to negotiate project-specific, 'key-stone' agreements that: enumerate the key components of the regulatory and reporting package; affirm the agreement of government, the project proponent, Aboriginal organizations, and perhaps other interested parties that this package is complete; and set out consolidated regulatory and reporting requirements. Since the intent would be to signal overall sign-off on the regulatory package and consolidate it in accordance with a generic template, some interviewees suggested that the negotiation of this type of agreement should not be contentious.

6. SECURITY DEPOSITS

Ensuring adequate security for mine reclamation and to address the environmental consequences of a significant project failure is an important regulatory priority in the NWT. Several interviewees

commented that the federal government has endeavoured to minimize the risk of unfunded liabilities from the BHP and Diavik projects.

6 1 The Recent Experience with Security Deposits

The BHP and Diavik agreements require security deposits, state when these deposits may be drawn down, and establish sanctions in the event of a failure to post and maintain adequate security. Interviewees indicated that security requirements were an important and contentious component of negotiations. It was noted, for example, that the principle that security deposits could be adjusted to reflect progressive reclamation was a major issue in the Diavik negotiations. In the end, this principle was accepted by government and is included in the agreement. Several interviewees also commented that security deposit negotiations raise technical questions regarding the assumptions and methods used to calculate reclamation and abandonment costs. Finally, risk estimates may be involved when security deposits are intended to provide a reserve in the event of unexpected environmental damage.

The interviews revealed two different views regarding the use of environmental agreements to establish security requirements. The first is that the posting and administration of security deposits is a regulatory issue that should be addressed within the regulatory regime. Some interviewees argued that requirements for security can and should be attached to land leases, water licenses and land use permits.

The second view is that environmental agreements have a useful role to play because of limitations of the regulatory regime. In particular, it was argued that these agreements:

- are necessary to establish an overarching security arrangement, given the fragmented approach to this issue within the regulatory regime;
- are suited to addressing reclamation and abandonment issues because they are 'life-of-project' instruments, in contrast with regulatory instruments that have shorter terms;
- provide greater flexibility for negotiating and enforcing security arrangements than standard land lease provisions or conditions attached to licences and permits; and
- allow for direct Aboriginal involvement in negotiations on security deposits, which is seen as appropriate because the ultimate consequences of inadequate security for the reclamation and abandonment of projects may be borne by Aboriginal people.

This debate about the relative merits of using land leases, regulatory instruments and environmental agreements to require and administer security deposits was placed in a broader political context by some interviewees. Given the magnitude of recent mining projects, the political sensitivity of security deposits, and the fact that unfunded environmental liabilities will ultimately have to be discharged by the Crown, it was argued that the Government of Canada as land owner is not be prepared to leave final authority on security

deposits to arm's length decision makers. On this view, direct ministerial oversight on this issue will be a fact of life for large projects. That oversight could come through the negotiation of the land leases or through project-specific environmental agreements.

6.2 The Regulatory and Policy Context

A number of the interviewees who addressed this issue expressed concern about legal and policy uncertainty relating to security deposits. Interviewees identified five key issues.

First, it was noted that there is currently no detailed policy in place regarding the posting and administration of security deposits in the NWT. This lack of policy direction was seen by some interviewees as contributing to the complexity and contentiousness of negotiations in this area. The absence of a legislative and policy framework that sets objectives and standards for abandonment and reclamation was also identified as a major deficiency in the regulatory regime.

Second, many interviewees were unclear about how the regulatory regime will work in relation to security requirements. Interviewees could not identify an existing regulatory or administrative mechanism to coordinate the security deposits that may be attached to the land lease, permits and licences. Several interviewees argued that a clearer assignment of responsibilities would contribute to clarifying the role for environmental agreements in this area.

A third issue concerns the administrative complexity resulting from multiple security requirements. It was suggested by one interviewee that a company may be subject to separate security requirements under four types of instruments, each with different time lines for periodic review and formal renewal. Even if there are offset mechanisms to avoid double-dipping, the result is an ongoing administrative burden.

The ability of licencing and permitting processes to require long-term security for reclamation and abandonment was a fourth issue identified in the interviews. Some interviewees argued that the MVRMA requires the Mackenzie Valley Land and Water Board to issue land-use permits on a piece-meal basis for individual activities. Furthermore, the term of these permits is limited to five years, with a possible two year extension.[15] It was suggested that the use of these instruments for security would result in a multitude of separate security deposits over the life of a large project. This fragmentation would, it was argued, make it difficult to determine if overall security is adequate and would create significant administrative problems.

Fifth, the amount of security that can be required through regulatory instruments was a concern of some interviewees. The security that the Mackenzie Valley Land and Water Board may require as a condition for land-use permits is limited by section 32 of the *Mackenzie Valley Land Use Regulations* to the aggregate cost of abandonment and reclamation. It was noted, however, that the posting of security

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[15] *Mackenzie Valley Land Use Regulations, sections* 26(5) and (6).

may provide a contingency fund in the event of unexpected environmental damage resulting from an accident or design failure. The cost of addressing this type of problem may be significantly greater than standard abandonment and reclamation.

6.3 Overview of Options

Many interviewees felt that the current approach to security deposits for major projects in the NWT could be improved. A common theme was the need for an overarching security arrangement for each major project that operates on a 'life-of-project' basis, is relatively easy to administer, and can be adjusted periodically to reflect changes in potential reclamation liability and risk. Several interviewees argued that consolidated security instruments should have a clear basis in law. These objectives could be achieved through policy or legislative changes in four areas.

First, it was argued that a detailed policy should be established regarding security deposits for major projects in the NWT. This policy could include general principles (e.g., no Crown liability; progressive reclamation and adjustment of security deposits accordingly) and specific guidelines regarding the calculation of security requirements and the types of security instruments that are acceptable. It could be extended to the Mackenzie Valley Land and Water Board through the provision in section 82 of the MVRMA that permits the Minister of DIAND to issue binding policy directions to this body.

The interviews revealed some differences in opinion about the potential of policy guidance to simplify the determination of security requirements. It was noted that policy direction may still leave room for disagreement about modeling tools and underlying assumptions. Calculations are complicated when security is intended to address the potential of significant project failure, since risk analysis is more difficult than adding up the costs of planned abandonment and reclamation. Nonetheless, some interviewees suggested that an explicit policy framework could transform the calculation of security deposit requirements into a more technical exercise, as opposed to being the subject of contentious negotiations.

The second option suggested by some interviewees is to establish a hierarchy for security deposits. The Minister of DIAND could, for example, decide that the posting of security is such a significant issue for the Government of Canada that reliance on arm's length regulatory processes is not satisfactory and ministerial involvement is required. An overarching and life-of-project security arrangement for each major project could be negotiated between the company and DIAND, likely in conjunction with the land lease.

Several interviewees commented that an overarching security arrangement should be coordinated with security requirements established through regulatory processes (e.g., land-use permits and water licences). One option identified in the interviews is a legislative amendment to clarify the residual role of the Mackenzie Valley Land and Water Board in this area. Another option is binding policy direction to the Board, requiring that security pursuant to water licences or land-use permits be consistent with overarching

security instruments for projects.[16] A requirement of this type would imply that consolidated security instruments should be in place before security requirements are addressed in regulatory proceedings.

Several interviews touched on the possibility of preserving a role for the Board in this area by establishing a two-stage hearing process. The first stage would consider whether or not to approve applications for the issuance or renewal of permits or licences, subject to whatever terms and conditions (except for security) are appropriate. The second stage would evaluate the need to attach security requirements. The Board would take account of the overarching security arrangement and consider submissions from the proponent, DIAND and potentially other parties on the adequacy of this arrangement to cover incremental abandonment and reclamation costs and risks of project failure associated with the new application. If additional security is required, it could be consolidated with the overarching security arrangement for administrative purposes.

A third option noted in some interviews is to improve coordination through an agreement among the entities with authority to require security deposits. A framework agreement, it was suggested, could provide the basis for project-specific agreements to consolidate security requirements at the end of the regulatory process. One interviewee noted that a fixed percentage of total security might be designated to meet the requirements of the land lease, the water licence, and land-use permits. This option, it was argued, could allow flexibility for the separate decision makers to address security. The cost would be increased complexity in combining requirements into a coherent package. Issues such as the fettering of decision-making powers of regulators and the efficient administration of security deposits might have to be addressed.

Finally, it was noted that security deposits could be the responsibility of a lead agency, perhaps the Mackenzie Valley Land and Water Board. While this option would move security requirements out of land leases, it was suggested that the Minister could exercise some control by issuing policy direction to the Board. The ability of the Board to establish and administer a 'life-of-project' approach to security and the limitations on the amount of security that the Board can require might have to be addressed if this option is adopted.

7. ADDITIONAL ISSUES

While the interviews focused primarily on the major functions of environmental agreements, a number of other issues were also raised.

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[16] Section 32(2)(c) of the *Mackenzie Valley Land Use Regulations* already states that, in setting the amount of security to be required through a land-use permit, the Board may consider "the prior posting of security by the applicant pursuant to other federal legislation in relation to the land-use operation."

7.1 General Criteria for the Use of Environmental Agreements

Several interviewees stated that environmental agreements of the type used for the BHP and Diavik projects may not be either necessary or appropriate for all mining projects and other major developments. Some interviewees suggested that the obligations associated with this type of agreement might be too onerous for smaller or less profitable mining operations. It was also noted, however, that simpler environmental agreements can and have been used. Furthermore, the argument was made that the use of environmental agreement should be determined on the basis of regulatory and other needs, not according to project size.

Interviewees noted that there is currently no formal policy regarding the types of projects for which environmental agreements will be required in the NWT. No interviewees had concrete suggestions, however, as to exactly how the line should be drawn. One suggestion was that, in the absence of clear criteria, government should resolve this issue on a project-by-project basis as early as possible following the submission of project applications.

7.2 Drafting Issues – Clarity, Enforceability and Measurable Standards

Concerns with the drafting of environmental agreements were raised in several interviews. It was argued that, since these agreements are intended to create legally binding obligations, attention to detail in drafting would be expected. Some interviewees commented that the BHP and Diavik agreements contain examples of unclear drafting such as:

- the use of terms such as "adaptive environmental management", "sustainable development" and "precautionary principle" that are either undefined in the agreements or defined in ways that do not yield precise or measurable standards for performance;

- the failure to define terms of substantive importance (e.g., there are no explicit criteria for determining who is a 'resident' in the requirement that appointees to EMAB must be resident in the NWT or Nunavut);

- the failure to enumerate requirements that are referred to as binding in the agreement (e.g., the absence of a schedule setting out the specific obligations captured by the definition of "Commitment" in the Diavik agreement); and

- the failure to achieve basic clarity in drafting certain provisions (e.g., article 4.5(e) of the Diavik Agreement states that "*Either or both* of the representative and the alternative represent appointed to the Advisory Board by the Parties or the Government of Nunavut *shall* be resident in the Northwest Territories or Nunavut.").

The interviewees who raised this issue strongly recommended improved legal drafting for any future

environmental agreements.

7.3 Dispute Resolution

The ability of Diavik to bring certain determinations by the Minister of DIAND to arbitration under article 15.4 of the Diavik agreement was raised by some interviewees. They argued that ministerial decisions should not be subject to arbitration at the request of a private company under a contractual arrangement.

7.4 The Negotiation Process

Several interviewees expressed reservations about the negotiation of the BHP and Diavik agreements, noting that discussions occurred 'behind closed doors', in a rushed and high pressure atmosphere, and with little or no opportunity for public input. For example, drafts were not made available for public comment prior to the finalization of these agreements. It was also noted that some Aboriginal parties faced difficulties in participating effectively in these negotiations, given their limited financial and human resources and their involvement in several simultaneous negotiation processes. Finally, some interviewees argued that too many opportunities existed to link environmental agreements with other issues for strategic purposes.

Some interviewees felt that these problems reflected the absence of a legal or policy framework for negotiations and the fact that these agreements were negotiated at a time when the parties were engaged in other regulatory and negotiated processes. It was noted that while the regulatory regime operates under a statutory mandate and contains requirements designed to ensure predictable, open and transparent processes, no such procedural guarantees currently exist for environmental agreements. Provisions for participant funding that apply to some project review processes are also absent, although Aboriginal groups may obtain some funding through the Interim Resource Management Assistance (IRMA) Program or other sources.

7.5 The Legal and Policy Basis for Environmental Agreements

As noted at several points above, a number of interviewees expressed the concern that the BHP and Diavik agreements lacked a policy framework and a clear legal basis. While some interviewees characterized these agreements as voluntary, others argued that they were really a regulatory requirement that established preconditions for project approval. For interviewees who viewed them as regulatory instruments, the fact that they were not negotiated pursuant to a legal requirement or a general statement of government policy is a source of concern. They argued that regulatory predictability, fairness, accountability, and the fundamental principles of the rule of law and the supremacy of Parliament require that regulation should occur through processes that are established by statutes and regulations. These interviewees argued that the use of environmental agreements in the future should occur within a well defined legislative and policy framework that grounds these agreements in law and addresses procedural

and substantive issues. Other interviewees were less concerned with the legal and policy basis, arguing that contractual mechanisms such as the BHP and Diavik agreements are perfectly appropriate means of providing a flexible and comprehensive approach to project regulation, addressing deficiencies in the regulatory regime, and responding to project-specific concerns.

One interviewee suggested that the legal basis for these agreements is the broad power of the Minister of DIAND to attach terms and conditions to land leases pursuant to section 8 of the *Territorial Lands Act* and section 12 of the *Territorial Lands Regulations*. It is noteworthy that the enforcement provisions in the BHP[17] and Diavik[18] agreements are linked to the land leases. One interviewee argued that the legal basis should be clearly stated in recitals to agreements.

7.6 Environmental Agreements and the Regulatory Regime

The connection between the use of environmental agreements and the adequacy of the regulatory regime was raised in many interviews. Several interviewees stated that their lack of confidence in the regulatory regime was the principal reason for their support for the continued use of these agreements. While some of these interviewees felt that the need for this type of agreement might be reduced or eliminated if the regulatory regime operated more effectively, they expressed considerable skepticism that the needed improvements will occur within the foreseeable future in the Mackenzie Valley. Interviewees identified a multitude of issues that, in their view, adversely affect the operation of the regulatory regime in the Mackenzie Valley and thereby strengthen the case for project-specific environmental agreements.

Other interviewees agreed that there is an important connection between environmental agreements and the regulatory regime, but differed on the appropriate course of action. They argued forcefully that government should focus on improving the operation of the MVRMA regime in order to increase confidence in its regulatory processes and instruments. In their view, these measures would reduce the need for project-specific agreements to establish oversight mechanisms, fill regulatory gaps, consolidate security requirements, and perform other functions. Many specific suggestions for improving the MVRMA regime were made during the interviews. These suggestions, however, raise complex issues beyond the scope of this paper.

Some interviewees did not, however, agree with either of these arguments. One view was that the BHP and Diavik agreements were negotiated to address specific needs and that general issues about the capacity of MVRMA boards and the level of confidence in that regime are not relevant to the determination of whether or not these types of agreements will be necessary in the future. Some interviewees also argued that the regulatory regime in the Mackenzie Valley contains deficiencies that cannot easily be addressed

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[17] Articles 13.4(c), (d) and (e) of the BHP agreement provide for termination of the surface lease as the ultimate sanction available to the Minister to enforce the agreement.

[18] For example, articles 15.3(a)(iii) and 15.3(c).

in practice. From this perspective, negotiating environmental agreements is a more pragmatic response that attempting to address these problems by improving regulatory instruments and processes directly.

8. CONCLUSION

Most of the people interviewed for this project felt that there is a need for project-specific environmental agreements of some sort in the Mackenzie Valley. When interviewees examined the BHP and Diavik agreements in functional terms, however, they identified opportunities to achieve some of the principal objectives through the evolving regulatory regime. It was also noted that improved coordination among regulators and a shift to regional as opposed to project-specific arrangements could address other functions. Some interviewees suggested that remaining project-specific matters – such as requirements for posting security – could be linked to the land lease or addressed through narrowly-focused agreements. A number of interviewees felt that the issues requiring project-specific attention and the process for addressing them should be clearly defined in law and policy. Overall, there was a strong sense in many interviews that policy direction regarding the future use of project-specific environmental agreements in the Mackenzie Valley will be significant for the longer-term evolution and maturing of the regulatory regime.

APPENDIX 1 – List of People Interviewed

Marie Adams
DIAND

Brenda Becker
DIAND

Ted Blondin
Dogrib Treaty 11

Alex Buchan
Kitikmeot Inuit Association

Bill Carpenter
World Wildlife Fund Canada

Vern Christensen
Mackenzie Valley Environmental Impact Review Board

Derek Chubb
BHP Diamonds Inc.

Rachel Crapeau
Yellowknives Dene

Chris Cuddy
DIAND

Julie Dahl
Department of Fisheries and Oceans

Doug Doan
RWED

Tamara Hamilton
DIAND

Steve Harbicht
Environment Canada

Mike Hardin
Ashton Mining of Canada Inc.

Brett Hudson
RWED

Rob Johnstone
Natural Resources Canada

David Kravitz
Yellowknives Dene

Brenda Kuzyk
Diavik Diamond Mines Inc.

David Livingstone
DIAND

Karl Lauten
Mackenzie Valley Land and Water Board

Letha MacLachlan
Legal Counsel to De Beers Canada Inc.

James McConnell
Department of Justice

David Milburn
DIAND

Zabey Nevitt
Independent Environmental Monitoring Agency

Kevin O'Reilly
Canadian Arctic Resources Committee

Clem Paul
North Slave Metis Alliance

Malcolm Robb
DIAND

Bill Ross
Independent Environmental Monitoring Agency

Roland Semjanovs
Mackenzie Valley Environmental Impact Review Board

Anne Snider
DIAND

Mary Tapsell
DIAND

Bob Turner
Environmental Monitoring Advisory Board

Mike Vaydik
NWT Chamber of Mines

Lee Webber
Department of Justice

Buddy Williams
DIAND

Scott Williams
BHP Diamonds Inc.

Eric Yaxley
DIAND