

November 29, 2004

Distribution;

RE: Consult to Modify, Paramount Cameron Hills Extension EA03-005

Please find enclosed a copy of the Review Board's Reference Bulletin, outlining the Review Board's procedures on post-Report of Environmental Assessment consultation, as defined in Sections 130 and 131 of the *Mackenzie Valley Resource Management Act* (MVRMA).

The Review Board has decided to seek the parties' comments and input related to the Responsible Ministers' proposed modifications (enclosed) to the recommended measures contained in the Paramount Resources Ltd. Report of Environmental Assessment issued June 1, 2004. Written comments will be accepted by the Review Board until 5:00 p.m. December 17, 2004.

If you require any further information or wish to seek clarification on this matter, do not hesitate to contact Kimberley Cliffe-Phillips, the Environmental Assessment Officer charged with this file at: (867) 766-7062 or Mary Tapsell, Manager of Environmental Assessment at: (867) 766-7063.

Yours truly,

Kimberley Cliffe-Phillips

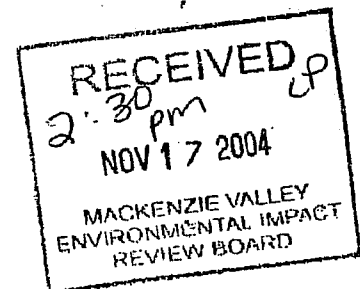
Fax:

To: Mr. Todd Burlingame, Chair Mackenzie Valley Environmental Impact Review Board
Fax: 766-7074
Date: November 17, 2004
Subject: Paramount Resources Limited Cameron Hills Extension Project
Pages: 9 (Including Cover)

Comments: Please see the attached letter with the proposed modifications and supporting rationale for your consideration for the Paramount Resources Limited Cameron Hills Extension Project.

If you have any questions or require additional information please do not hesitate to contact me at 867-699-2587 or by e-mail at fairmanf@inac.gc.ca.

Thank you, Fraser Fairman



From The Desk Of:

Fraser Fairman, Environmental Scientist

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Indian and Northern Affairs Canada
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By Facsimile: (867) 766-7074

Wednesday, November 17, 2004

Mr. Todd Burlingame
Chair
Mackenzie Valley Environmental
Impact Review Board
P.O. Box 938
YELLOWKNIFE, NT X1A 2N7

Dear Mr. Burlingame:

Re: Paramount Resources Limited Cameron Hills Extension Project

As follow-up to the August 19, 2004, letter from Minister Scott, agreeing to initiate consultation with the Mackenzie Valley Environmental Impact Review Board ("Review Board"), we specifically want to address recommended measures R7, R11, R12, R13, R15, and R16 for the above noted project. We have prepared modifications with supporting rationale for your consideration and comment.

A meeting is tentatively scheduled during the week of November 22, 2004, to discuss the proposed modifications, as arranged with the Review Board's Manager of Environmental Assessment.

Yours sincerely,

David Livingstone
Director, Renewable Resources and Environment Directorate

c.c.: Gavin More, Government of the Northwest Territories
Wade Romanko, Environment Canada
Bruce Hanna, Fisheries and Oceans Canada
Laura Van Ham, National Energy Board

Canada

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**ASSESSMENT OF MEASURES FOR THE PARAMOUNT RESOURCES
LIMITED CAMERON HILLS EXTENSION PROJECT**

RECOMMENDED MEASURE 1

Accept

RECOMMENDED MEASURE 2

National Energy Board (NEB)

RECOMMENDED MEASURE 3

NEB

RECOMMENDED MEASURE 4

NEB

RECOMMENDED MEASURE 5

NEB

RECOMMENDED MEASURE 6

NEB

RECOMMENDED MEASURE 7

The Review Board recommends that the Government of Canada (INAC and Environment Canada) and the Government of the Northwest Territories, implement recommendation 7 from the Ranger-Chevron EA by June 2005.

7. Air Quality - The Review Board recommends that the GNWT and Environment Canada, working with the industry and affected communities, develop enforceable air quality guidelines or standards for oil and gas industry operation in the NWT, or adapt regulations from adjoining jurisdictions as appropriate. These guidelines should include the use of latest technologies and good industry practices, and a system of monitoring that would be sufficient to build a baseline database over the long term and to demonstrate the maintenance of exiting environmental quality.

Suggested modification:

Remove

Rationale:

The Government of Canada, as represented by Environment Canada (EC), and Indian and Northern Affairs Canada (INAC), and the Government of the Northwest Territories (GNWT), as represented by the Department of Resources, Wildlife and Economic Development (RWED), recognize and acknowledge the importance of enforceable air quality guidelines and standards within the Northwest Territories. However, our understanding of the Environmental Assessment process is that the Review Board recommended measures should be focused on the project under review and such measures as may be required to mitigate environmental impacts of that project.

The National Energy Board (NEB) has the legislated authority to impose conditions requiring proponents and operators of oil and gas developments to provide evidence that air emissions from project operations are not resulting in unacceptable impacts to air quality (e.g. exceeding relevant air quality standards such as the Alberta Energy and Utilities Board Guide 60: Upstream Petroleum Industry Flaring Guide). The NEB is empowered to impose penalties, including shut-down of operations, if any facility does not comply with the conditions imposed.

For the Paramount Resources Ltd. Cameron Hills Extension Project, the NEB, in consultation with EC, INAC, and RWED, has proposed modifications to the Review Board's recommended measures R2, R3, R4, R5, and R6, which the agencies are satisfied will meet the intent of the original recommended measures pertaining to air quality issues and reporting. The NEB has also indicated that the general condition and selection of relevant air quality standards to be included in their future regulatory instruments would be made in consultation with appropriate federal and territorial government air quality staff. In the opinion of EC, INAC, and RWED, the Review Board's recommended measures related to enforceable air quality guidelines or standards that are specific to the Paramount Project will be addressed through the NEB authorizations/approval process.

Therefore, it is suggested that recommended measure 7 be removed and, in these matters the NEB be considered as the agency responsible for the enforcement of air quality guidelines for the Paramount Project.

RECOMMENDED MEASURE 8

Accept

RECOMMENDED MEASURE 9

NEB

RECOMMENDED MEASURE 10

Accept

RECOMMENDED MEASURE 11

The Review Board recommends that the Department of Fisheries and Oceans conduct regular site visits to the Cameron Hills to inspect for determine if any impacts to fish or fish habitat. Reports of these inspections must be made publicly via DFO and also be sent directly to Ka'a'Gee Tu First Nation, in a plain language version.

Suggested modification:

The Review Board recommends that the Department of Fisheries and Oceans conduct regular site visits to the Cameron Hills to inspect for, and determine if any impacts to fish or fish habitat have occurred. Reports of these inspections, if not related to an investigation, must be made publicly available via DFO and also be sent directly to Ka'a'Gee Tu First Nation, in a plain language version.

Rationale:

During ongoing investigations, DFO enforcement does not comment or release detailed information to the public about investigations. DFO feels this could compromise a case and can lead to the case being tried in the media rather than in the court as it should be. After a case is dealt with, DFO will be in a better position to comment.

RECOMMENDED MEASURE 12

The Review Board recommends that RWED will, within the next six months, initiate the formation of a Deh Cho Boreal Caribou Working Group (DCBCWG). The working group will, among others things, consider: habitat identification, range plan development, thresholds, monitoring systems, adaptive mitigation, research programs and cumulative effects models. In addition, it will coordinate its activities with similar working groups in Alberta and British Columbia.

Suggested modification:

The Review Board recommends that RWED will, within the next six months, initiate the formation of a Deh Cho Boreal Caribou Working Group (DCBCWG). RWED shall lead the DCBCWG in the development of a Boreal Caribou Management Plan for boreal caribou populations in the southern Deh Cho (south of the Mackenzie River and east of the Liard River) within 18 months. In developing the Boreal Caribou Management Plan, RWED shall ensure that the DCBCWG considers, among others things: habitat identification, range plan development, thresholds, monitoring systems, adaptive mitigation, research programs and cumulative effects models¹. RWED shall also coordinate the DCBCWG's² activities with similar working groups in Alberta and British Columbia; and operate within the framework of recovery planning for Boreal Caribou in

the NWT³, and develop a Boreal Caribou Management Plan specifically for the Cameron Hills area⁴. RWED shall provide applicable thresholds for the Project to the MVLWB over time based on the outcomes of future research and natural changes to the boreal caribou habitat.

Rationale:

- 1) This clarifies the purpose of the DCBCWG.
- 2) As worded in the MVEIRB measure, it is not clear whether "it" refers to RWED or the DCBC Working Group. This change clearly indicates that it is RWED that will coordinate activities with adjacent jurisdictions.
- 3) The additional phrase clarifies that the DCBCWG will function within the NWT framework for recovery planning for boreal caribou as this will be the territory-wide decision-making process. It is also intended to complement the application of other land use planning systems in the Deh Cho Region that are under development.
- 4) A coordinated and defined mechanism for developing actions needed to prevent Project specific significant adverse environmental impacts on boreal caribou populations will be satisfied by the Boreal Caribou Management Plan.

RECOMMENDED MEASURE 13

The Review Board recommends that the MVLWB adopt an average linear disturbance target of 1.8 km per km squared as a boreal caribou disturbance threshold for the entire Cameron Hills, NT area, in order to prevent significant adverse environmental impacts on boreal caribou populations whose range includes the Paramount SDL and surrounding area. This shall be considered in all future land use applications in the area.

Suggested Modification:

The MVLWB shall include conditions in its authorizations for this project that will ensure boreal caribou do not experience significant disturbance as a result of Project activities. As part of this, the MVLWB should define a geographic area for the project area¹ based on an ecologic classification system developed by the GNWT. The MVLWB should also consider the applicability of targets for habitat disturbance. Such conditions shall be reviewed annually and adjusted as necessary, based on the best available scientific information², other advice and project area information including Paramount reports and plans (see below).

Paramount shall submit an annual report to the MVLWB detailing disturbance to boreal caribou habitat resulting from past Project activities and the state of regrowth of disturbances. The annual report shall be similar to proponent reports done in other

jurisdictions such as British Columbia or Alberta. Paramount shall also include its plans that may affect boreal caribou habitat for the upcoming year³.

Rationale:

- 1) The geographic scope of the 'entire Cameron Hills, NT' is not clearly defined in the original measure and there is no direction in the original measure on how the MVLWB would decide. Defining the boundaries of this geographic area based on an ecological classification is required to ensure compatibility with the boreal caribou management units or ranges that will be prescribed in the boreal caribou management plan suggested in modified measure 12.
- 2) Thresholds, developed as part of boreal caribou management plans, will be provided to the MVLWB as part of the recovery plans by RWED.
- 3) The requirement for annual reports to the MVLWB by Paramount Resources Ltd. will permit the MVLWB to track new disturbances related to Project activities as well as considering past disturbance that are satisfactorily regrown when considering changes to thresholds for the project area.

RECOMMENDED MEASURE 14

Accept

RECOMMENDED MEASURE 15

The Review Board recommends that Paramount and the other parties to the unfinished Cameron Hills Wildlife and Resources Harvesting Compensation Plan developed in response to measures 13 and 15 of EA01-005 complete the compensation plan. If a compensation plan cannot be completed by these parties within 90 days of the federal Minister's acceptance of this report, this matter will proceed to binding arbitration, pursuant to the *NWT Arbitration Act*. A letter signed by the parties, indicating agreement to the compensation plan or in the case of arbitration, the arbitrator's decision must be filed with NEB and MVLWB prior to the commencement of Paramount's operations under land use permit MV2002A0046.

Suggested modification:

Remove

Rationale:

The *NWT Arbitration Act* applies in situations where the parties have agreed in writing

to submit their differences to arbitration, or where the matter is referred to arbitration pursuant to another Act (Sections 2 and 3 of the *NWT Arbitration Act*). There is no statutory authority in the *Mackenzie Valley Resource Management Act* (MVRMA) that would allow the Review Board to refer the matter to arbitration, and there is no evidence that the parties have consented to this arrangement. Arbitration cannot be unilaterally imposed upon parties.

The Review Board is required to consider both the environmental impact, and the significance of that impact when recommending a mitigative measure. In this case, the Review Board has recommended the mitigative measure without providing an analysis as to whether or not there will actually be a reduction or loss of wildlife in the area, and how this will impact the aboriginal communities.

RECOMMENDED MEASURE 16

The Review Board recommends that the GNWT develop a socio-economic agreement with Paramount in consultation with affected communities before operations proceed under the land use permit MV2002A0046. The socio-economic agreement is to address issues such as employment targets, educational and training opportunities for local residents and a detailed ongoing community consultation plan.

Suggested Modification:

Remove

Rationale:

A follow-up program such as a socio-economic agreement can act as an early warning system to identify unexpected negative effects and trigger adaptive management of those effects. With few exceptions, the Proponent did not quantify or describe the expected socio-economic effects of its proposed project. In fact the Proponent predicted that there would be minimal socio-economic effects. The lack of evidence of effects makes the need to a follow-up program, such as a socio-economic agreement, unnecessary and unfeasible in this case.

For the previous MVEIRB environmental assessment that required a socio-economic agreement, virtually all of the commitments captured in the resulting agreement were taken from the developers commitments made during the environmental assessment. In this assessment, the Proponent generally described the efforts it would undertake to minimize socio-economic effects, it did not describe the specific measures that would be put in place. The Proponent is not proposing untested mitigation measures, the effectiveness of which should be confirmed through a follow-up program. Where the Proponent did quantify the expected effect of its project (e.g., 25% employment), it used the results achieved on past projects.

The proposed measure forces the GNWT to unilaterally "develop" an agreement with the Proponent in the absence of any identified effect and commitments to mitigation. It is not feasible to develop a socio-economic follow-up program given the lack of predictions and commitments that have been accepted by the MVEIRB in the environmental assessment. The qualifying phrase "*issues such as...*" makes it unclear what would be required in a socio-economic agreement. This is not a sufficiently clear basis on which to impose measures on the Proponent.

In the context of the proposed project and a socio-economic agreement, consultation with communities is the responsibility of the Proponent. Socio-economic agreements, in the sense described in the MVEIRB Report, do not involve consultation with select communities.

RECOMMENDED MEASURE 17

Accept



**Mackenzie Valley
Environmental Impact Review Board**

REFERENCE BULLETIN

**PROCEDURES FOR
POST-ENVIRONMENTAL ASSESSMENT CONSULTATION
UNDER THE MVRMA**

INTRODUCTION:

This reference bulletin is intended to describe and clarify the procedures which will be followed by the Mackenzie Valley Environmental Impact Review Board (Review Board) in responding to a request from the federal Minister and responsible ministers or the Designated Regulatory Agency (DRA)¹ for consultation² on the recommendations made by the Review Board in a report of Environmental Assessment (EA) or Environmental Impact Review (EIR).

The *Mackenzie Valley Resource Management Act* (MVRMA) provides for a unique form of consultation between final decision makers and the Review Board after the completion of either an EA or an EIR. This consultation is intended to assist these decision makers to determine how to respond to Review Board recommendations made in an EA or an EIR.

The MVRMA does not provide specific guidance about appropriate procedures for the conduct of such consultation exercises (called "consultations" below).

THE STATUTORY FRAMEWORK:

When the Review Board completes its work on an EA or an EIR, it is required by sections 128(2) or 134(2) of the MVRMA, as the case may be, to make a report of Environmental Assessment or of Environmental Impact Review. Section 121 of the MVRMA requires that the Review Board include its reasons for decision in these

¹ The "federal Minister" is the Minister of Indian Affairs and Northern Development. The term "responsible minister" is defined in section 111 of the MVRMA. The Schedule to the MVRMA set out the list of Designated Regulatory Agencies. The only agency listed at this time is the National Energy Board.

² This "consultation" process is an aspect of the decision-making process set out in the MVRMA and has no relationship to consultation requirements which may arise when proposed development activities affect the exercise of aboriginal or treaty rights.

reports. Once complete, such a report is conveyed to the federal Minister or the DRA as required by the circumstances.

These decision makers review the recommendations in the Review Board report. They have a number of options for their response to the report set out in sections 130 and 131 or 135 and 137 of the MVRMA, ranging from acceptance to rejection of the recommendations made by the Review Board.

One of the options included in the MVRMA is for the federal Minister or the DRA to “consult” with the Review Board with a view to possible modification of the Review Board’s recommendations.

Consultations are therefore possible after either an EA or an EIR. They are initiated by request of the federal Minister and responsible ministers or of the DRA.

The statutory provisions from part 5 of the MVRMA relevant to the consultation process are set out in Appendix 1.

These consultations are not intended to make substantial changes to Review Board recommendations. As indicated in the MVRMA, the consultation process is only intended to modify recommendations. If substantial change is required to a recommendation, the federal Minister or the DRA can refer the recommendation back to the Review Board for reconsideration³ or if the recommendation is unacceptable, it can be rejected.

REVIEW BOARD EXPERIENCE WITH CONSULTATIONS:

Since the MVRMA came into force in 1998, the Review Board has participated in consultations on Environmental Assessment Reports (EAR) on several occasions. Generally, the changes to Review Board recommendations resulting from consultations have addressed details associated with the implementation of the recommendations. To date, none of the consultations conducted under the MVRMA have involved the introduction of new information or of matters of public concern not before the Review Board in the EA proceeding.

In order to conduct a consultation, the representatives of the Review Board and the federal and responsible Ministers or the DRA have generally exchanged correspondence and held a meeting.

Given that the Act provides little guidance on the actual conduct of these exercises, the consultation process has varied from case to case depending on the developer, the federal and responsible Ministers involved, whether the DRA was involved or not and on the basis of the specific facts and circumstances in the EA as well.

The Review Board has never conducted an EIR and so has no experience with consultation under sections 135 or 137 of the MVRMA.

³ See for example subparagraph 130(1)(b)(i), and paragraphs 131(1)(a), 135(1)(a) and 137(1)(a) of the MVRMA.

There are a number of questions with respect to the process of conducting a consultation and the roles and authorities of the participants.

Below we set out a series of the considerations which have arisen in the context of consultations to date and the Review Board's current position on consultation procedures. Some aspects of consultation procedure are clearer than others. All involve interpretation of the provisions of the MVRMA.

1. The Scope of a Consultation:

A consultation meeting will be limited to a consideration of those recommendations upon which the federal Minister or the National Energy Board have requested consultation. The Review Board is of the view that no other issues considered in the EA or EIR may be raised.

Under subsection 130(1) and 131(1) of the MVRMA the federal Minister or the DRA have the discretion to specify the list of recommendations upon which the consultation will take place. This list of recommendations, chosen by the federal Minister and responsible Ministers or DRA, defines the scope of the consultation.

Unless the federal or responsible Ministers or the DRA provide new information or advise of matters of public concern as provided for by the MVRMA, no new information or evidence will be considered in a consultation.

2. The Nature of a Consultation:

A consultation process should be "on the record" and the results should be documented and reported in order to ensure transparency in the part 5 MVRMA decision making process.

The Review Board will place any request for consultation on the public record for the EA or EIR in question. Any relevant correspondence or materials prepared for the consultation will also be placed on the public record.

A summary of the issues raised in relation to the recommendation(s) which are the subject of the consultation and any resolution achieved along with the text of any modified recommendations will also be placed on the public record for an EA or EIR.

The consultations should explore the context and rationale for the Review Board recommendations which are being considered. It must also involve a discussion of the difficulties or concerns arising from the recommendation(s) which led the Minister or the DRA to decide to consult the Review Board. It is essential for the parties to the consultation to understand respective positions in order for the consultation to succeed.

The purpose of a consultation process is to modify a Review Board recommendation. At the EA stage of the part 5 process, under subparagraph 130(1)(b)(ii) or paragraph 131(1)(b), the recommendation must either be adopted with modifications or rejected. If rejection occurs, the Act makes it mandatory for an EIR to be conducted.

After an EIR, under paragraph 135(1)(b) or 137(1)(b) a recommendation may be adopted with modifications after consultation or simply rejected.

3. The Parties to the Consultation Process:

It is not possible for the federal Minister or DRA to meet with the Review Board directly to conduct consultations. The actual participants in a consultation are the representatives of the Minister or DRA and the representatives of the Review Board.

The federal Minister and the DRA have no explicit statutory obligation under the MVRMA to include others in a consultation, including the parties to an EA or an EIR. Since the consultation takes place on the request of the federal Minister or the DRA, any decision about involving others, such as the parties to an EA or an EIR, is for them to make.

Based on the provisions of section 3 of the MVRMA, the Review Board could, in appropriate circumstances, meet separately with parties to an EA or an EIR to seek assistance in framing its response to the decision makers. Such circumstances, however, are likely to be the exception rather than the rule.

4. Modifying a Review Board Recommendation:

As has been indicated, the purpose of a consultation is to modify a Review Board recommendation. This necessarily involves a change in the wording of the recommendation.

To date, all consultations have resulted in a consensus on revised wording for the recommendations for which the consultation has been conducted. Consequently, the revised wording has been agreed to by representatives of the parties to the consultation and subsequently recommended to the Review Board for its approval. Once this approval is achieved, the Review Board then communicates its views on the jointly modified recommendation to the Minister or the DRA, as the case requires. At that stage the Minister or the DRA decides whether to accept the recommendation as modified or reject it.

In the context of a consultation under subparagraph 130(1)(b)(ii) or paragraph 131(1)(b), there is a limit on the federal Minister and responsible ministers' or DRA's capacity to modify a recommendation. If the changes proposed fundamentally alter the purpose, substance or effect of a recommendation this is tantamount to a rejection of the recommendation. The proper course of action, in this instance, is to reject the original recommendation thus triggering an EIR.

Generally, the discussion of the modifications proposed for a recommendation takes place in a single meeting. It is possible however, pursuant to the definition of consultation in the MVRMA, for the Review Board to take a reasonable period of time to prepare its views. Thus, a second meeting of the representatives of the parties could be required.

The MVRMA requires that representatives of the federal Minister or the DRA disclose any new information or matter of public concern which may have led to the decision to consult and which may not have been known to the Review Board at the time of its original decision. New information would include evidence relevant to a Review Board decision and recommendation which might result in a change to the recommendation.

CONCLUSION:

The consultation process is intended to assist final decision makers under the MVRMA to decide whether to accept with modifications or reject a Review Board recommendation after an EA or an EIR. The procedure adopted for the conduct of a consultation must respect the Review Board's decision making process and the requirements of section 3 of the MVRMA while properly reflecting the statutory authorities of the federal Minister and responsible ministers and the DRA.

The consultation process should, to the extent possible, be transparent and any modification of Review Board recommendations should be undertaken using a process that ensures that the ultimate accountability for such modifications rests with the federal Minister and responsible ministers or DRA.

For further information,

Mackenzie Valley Environmental Impact Review Board,
Box 938, Yellowknife, NT. X1A 2N7
Phone (867)766-7050
Fax (867) 766-7074
URI mveirb.nt.ca

Released : August 2004.

APPENDIX 1. MVRMA Provisions Related to Consultation

128. (2) The Review Board shall make a report of an environmental assessment to

- (a) the federal Minister, who shall distribute it to every responsible minister; and
- (b) any designated regulatory agency from which a licence, permit or other authorization is required for the carrying out of the development.

130. (1) After considering the report of an environmental assessment, the federal Minister and the responsible ministers to whom the report was distributed may agree

.....

(b) where a recommendation is made under subparagraph 128(1)(b)(ii) or paragraph 128(1)(d),

(i) to adopt the recommendation or refer it back to the Review Board for further consideration, or

(ii) after consulting the Review Board, to adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal;

.....

(3) If the federal Minister and responsible ministers consider any new information that was not before the Review Board, or any matter of public concern not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(b)

131. (1) A designated regulatory agency shall, after considering a report of the Review Board containing a recommendation made under subparagraph 128(1)(b)(ii) or paragraph 128(1)(d),

.....

(b) after consulting the Review Board, adopt the recommendation with modifications or reject it and order an environmental impact review of the proposal.

.....

(4) If a designated regulatory agency considers any new information that was not before the Review Board, or any matter of public concern that was not referred to in the Review Board's reasons, the new information or matter shall be identified in the decision made under this section and in any consultation under paragraph (1)(b).

.....

134. (2) A review panel shall issue a report containing a summary of comments received from the public, an account of the panel's analysis, the conclusions of the panel and its recommendation whether the proposal for the development be approved, with or without mitigative or remedial measures or a follow-up program, or rejected.

135. (1) After considering the report of a review panel, the federal Minister and responsible ministers to whom the report was distributed may agree to

.....

- (b) after consulting the review panel, adopt the recommendation with modifications or reject it.
- (2) If the federal Minister and responsible ministers consider any new information that was not before the review panel, or any matter of public concern not referred to in the panel's reasons, the new information or the matter shall be identified in the decision made under this section and in their consultations under paragraph (1)(b).

137. (1) A designated regulatory agency shall, after considering the report of a review panel,

- (a) adopt the recommendation of the review panel or refer it back to the panel for further consideration; or

- (b) after consulting the review panel, adopt the recommendation with modifications or reject it.

(2) If a designated regulatory agency considers any new information that was not before the review panel, or any matter of public concern that was not referred to in the panel's reasons, such new information or such matter shall be identified in the decision of the agency and in any consultation under paragraph (1)(b).

Also important in the context of consultations is the description of "consultation" found in section 3 of the Act:

3. Wherever in this Act reference is made, in relation to any matter, to a power or duty to consult, that power or duty shall be exercised

- (a) by providing, to the party to be consulted,

- (i) notice of the matter in sufficient form and detail to allow the party to prepare its views on the matter,

- (ii) a reasonable period for the party to prepare those views, and

- (iii) an opportunity to present those views to the party having the power or duty to consult; and

- (b) by considering, fully and impartially, any views so presented.