Alan Ehrlich

From: lands@nsma.net
Sent: Tuesday, April 25, 2006 1:13 PM
To: Alan Ehrlich
Cc: Beverly Chamberlin; Colleen Roche; Dennis Kefalas; Ernie Watson; Fred Turner; Helen Butler; Jane Howe; jason_mcneill@gov.nt.ca; John Hull; Kathleen Racher; Ken Hall; Kevin O'Reilly; Larry Connell; Lisa Hurley; lisa.lowman@ec.gc.ca; lucianoa@theedge.ca; Magnus Borque; Mark Davy; lutselke_wle@yahoo.ca; Paula Spencer; Rebecca Chouinard; Ron Connell; lands@nsma.net; scook@denenation.com; Tlicho Lands; valerie@nsma.net
Subject: Re: Letter from Miramar

Follow Up Flag: Follow up
Flag Status: Red

NSMA COMMENT
N ENV SCREENING .

All,

FYI - NSMA wrote a letter very similar to the one atached below (edits are bolded)but (I think) we had some technical difficulties which caused the letter to be delivered too late for posting on the public registry.

Notwithstanding the dissapointing results of the appeal to N.A. Tungsten (about grandfathering projectsd vs. grandfathering licences), NSMA still considers it absurd and contrary to the goal of sustainable development to exempt projects applying for new licences from environmental assessment, IN SPITE OF OBVIOUS ENVIRONMENTAL IMPACTS, JUST because they once had a licence issued before 1984.

Since section 157 is in the TRANSITIONAL portion of the MVRMA, it should only be applied to undertakings or projects that are still in a stage of transition, ie; operating under an authorization or licence issued before 1984. There are statutory maximum time limits on licences (25 years) for a reason - to protect the public and the environment!!!

Besides, there have most likely been a variety of incrementally significant alterations to this project since it originally got a licence.Allowing it to flood seems to me to be a "significant alteration"
to the mine plan, and in fact is the beginning of the implementation of a closure plan which has not even been approved yet.

> Hello All,
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> The attached link (below) will take you to a letter from Miramar Con
> Mine Ltd. posted on the Review Board website. The developer states
> that the proposed water license extension is not subject to part five
> of the MVRMA because it is grandfathered under s.157 of the act, and
> therefore cannot be assessed.
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> The Review Board is considering the letter and will respond shortly.
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> Regards,
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> Alan Ehrlich
>
> Senior Environmental Assessment Officer
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>
> The link to the letter:
>
> http://www.mveirb.nt.ca/upload/project_document/1145897640_s157%20lett
> er %20from%20Miramar%20April%2021%202006.PDF
>
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> --
> This message has been scanned for viruses and dangerous content by
> MailScanner, and is believed to be clean.
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NORTH SLAVE METIS ALLIANCE

PO Box 2301 Yellowknife, NT X1A 2P7

Copy of November 18, 2005 (**some edits after sending - April 06**)

Mackenzie Valley Land and Water Board
7th Floor, 4910-50th Ave
P.O. Box 2130. Yellowknife, NT. X1A 2P6
Phone (867) 669-0506
Fax (867) 873-6610

Attention: Lisa Hurley
Email address - lhurley@mvlwb.com
Phone number - (867) 766-7473

Re: Environmental screening exemption of amendment to # N1L2-0040

As requested, the North Slave Metis Alliance (NSMA) respectfully submits the following comments regarding the exemption of Miramar Con's application to amend Water License #N1L2-0040 from preliminary screening.

We understand that The Mackenzie Valley Resource Management Act, Part 5:

- S.124 (1) requires that every application requiring a regulatory authorization will receive a preliminary screening, unless exempted.
- S.143(1)(c) developments **may,** by regulation, be exempted from preliminary screening **if** the environmental effects **are insignificant**.
- The Exemption list regulation, Part 1, Section 2, exempts all developments, **if unmodified**, which have already fulfilled an **environmental review process**.

This regulation is predicated on the assumption that previously screened or assessed projects cause no significant adverse environmental effects. However, Indigenous Metis have been subjected to numerous and significant direct, indirect, and cumulative impacts to our biophysical and socioeconomic environment from many previously screened and licensed developments throughout the North Slave Region. Frequently, these impacts are endured without the benefit of consultation or accommodation, and without the capacity to pursue available remedies.

The February 14, 2005 letter from the MVLWB to Miramar Con, officially changing the name of the "Final Abandonment and Restoration Plan" to "Final Closure and Reclamation Plan" to "better reflect what the plan is meant to outline", proves that this particular project is no longer believed likely to cause "no significant adverse effects". This acknowledgement begs the question of whether or not the exemption regulations can validly be applied.

Presuming the regulation was validly applied, it might be interpreted to exempt application #N1L2-0040 from preliminary screening, but not necessarily. We do not have the information required, or the capacity to assess the information, if we did find it, regarding whether or not the project has in fact satisfied the requirements of a previous environmental impact assessment process, or whether the project has been modified since that assessment process was satisfied. None of that information was provided to us with the current application.

Partially out of necessity, we consider the environmental screening itself of minor importance, to us, within the larger framework of the Board's responsibilities as contained in Sections **14, 15, 30, 125, 126** of the NWT Waters Act. Based upon our reading of the those sections, we conclude that the Board has the jurisdiction and discretion to do whatever it deems appropriate to ensure the rights of existing water users and property rights holders are protected, with or without conducting a screening. Further, we suggest that it is in everyone's best interest that the Board issue licences which do not subject Licensees to litigation, and which do not call the Board's decision making process into **question**.

In so far as a preliminary screening might assist the Board in the fulfillment of its more general responsibilities to the public (as required by the NWT Waters Act and discussed below), and its fiduciary duties to aboriginal rights holders, and in support of the Honor of the Crown, we suggest the Board might wish to complete one whether required or not.

Sincerely,

Sheryl Grieve. B.Sc.
Environment and Resource Coordinator
Phone (867) 873-NSMA (6762) ext. 26
Fax (867) 669-7442
lands@nsma.net

According to our understanding, the NWT Waters Act:

- S.14(4)(b) prevents the Board from issuing a license unless compensation is paid to existing water users, property right holders, and other rights holders[1].
- S. 14(4)(c) prevents the Board from issuing a license unless the waste discharge will meet water quality and effluent standards acceptable to the Board.
- S.14(4)(d) prevents the Board from issuing any license unless satisfied that the financial security is adequate for satisfactory mitigation, maintenance, and restoration.
- S.14(5) requires the Board to consider **all** relevant factors in the determination of what compensation might be appropriate.
- S.15 (1) empowers the Board to include **any** conditions it deems appropriate in a license.
- S. 15(2) requires the Board to minimize **any** adverse effects on existing water users, property owners, occupiers, and other land-based rights holders[2].
- The Waters Act, S.18 makes the S.14-17, as above, applicable to license renewals and amendments.
- S. 30(1) Any person adversely affected by the issuance of a license has the right to sue for compensation.
- S.125(2) requires consideration of public concern when screening a proposal within local government territory.
- S.126(2) requires the Environmental Review Board to conduct an assessment if a local government refers a project affecting lands or waters within its boundaries, regardless of the results of any screening.
- S.126(3) permits the MVEIRB to conduct an assessment on its own motion.
- S.126(4) confirms that requirements to consider public concern, and the ability of a local government to make an assessment referral, apply to developments exempted from screening.

[1] But only if those rights holders respond in the required manner to a newspaper ad.
[2] Ibid. - in conflict with the Honor of the Crown and it's fiduciary obligations to Aboriginal People?.