

Mackenzie Valley Environmental Impact Review Board

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Our Files: EA99-0004; 99-0061; 99-0086

Distribution List

RE: EXPERT ADVICE FOR ENVIRONMENTAL ASSESSMENTS OF:
- BHP EKATI DIAMOND MINE EXPANSION
- RANGER OIL LIMITED/CANADIAN FOREST OIL LIMITED/CHEVRON FORT LIARD GAS PIPELINE

You have been identified as an expert advisor, or as having information that may be relevant to the environmental assessments of the BHP Ekati Diamond mine expansion, and the Ranger Oil limited/Canadian Forest Oil/Chevron (Ranger et al) Fort Liard Gas Pipeline. Periodically over the next year you or someone in your department/agency will be called upon to provide expert input on the environmental assessments of these development proposals.

The Mackenzie Valley Environmental Impact Review Board (Review Board) is a public board governed by the *Mackenzie Valley Resource Management Act* (MVRMA). Its mandate is to undertake Environmental Assessments (EA) and Environmental Impact Reviews (EIR) of developments in the Mackenzie Valley. The MVRMA enables the Review Board, subject to any other federal or territorial law, to obtain from any department or agency of the federal or territorial government any information in the possession of the department or agency that the Review Board requires for the performance of its functions.

The attached work plans explain how the Review Board intends to undertake the environmental assessments of each of these development proposals. The work plan also indicates how regulatory authorities, a designated regulatory agency (the NEB) where required, federal and territorial governments, first nations, experts, the public and other interested parties can participate in the EA process.

Experts will receive a copy of the development description prepared by the developer (the development description for the Ranger et al development is included in the work plan). Based on the submission, experts will be asked to provide "questions" or guidelines (direction) to the developer on preparing the environmental assessment report. Experts will then contribute to determining the completeness and adequacy of the environmental assessment report relevant to their areas of expertise.

While you have been identified as an expert, if there are other experts from your department/agency that should be included please inform us as soon as possible. If your department/agency intends to coordinate its input through a single contact, please identify the person who is responsible for doing that and let us know as soon as possible.

Sincerely,

[Original signed by]

Luciano Azzolini
Environmental Assessment Officer

[Original signed by]

Gordon Stewart
Environmental Assessment Officer

attachments.

Heidi Klein
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In exercising its authority, the Review Board is guided by the following legal principles, and by definitions, purposes and factors found in the MVRMA. This context provides the developer, RA's as required, federal and territorial governments, First Nations, expert advisors, and other affected or interested parties the framework within which the environmental assessment will be conducted.

The quality and completeness of information or evidence provided to the Review Board by all parties will affect the timeliness in completing the EA. The Review Board takes its roles and responsibilities very seriously and expects all parties involved in the EA process to do the same, as well as to abide by the highest standards of integrity, honesty and fairness.

Legal Principles

The Review Board is governed by the rules of natural justice and procedural fairness. This essentially means that fair play is required when exercising decision making functions. Three of the basic elements are:

- (i) *The right to be heard* - means providing fair opportunity for parties to prepare and state their case, and to correct or contradict relevant statements prejudicial to their position;
- (ii) *The rule against bias* - is a rule against prejudging a case; addressing not only actual bias but also any reasonable apprehension of bias; and,
- (iii) *Fettering of discretion* - means the Review Board is governed by the common law principle which requires that "s/he who hears must decide". This means that the Board members who hear or review the evidence in an EA must be the decision makers. Members who did not participate can play no role in the decision. The law also requires that the Board and its members must be free to exercise their full authorities under the statute. The Board must decide each case on its own merits.

Definitions

The following definitions are from sections 2 and 111 of the MVRMA.

Development - means any undertaking, or any part of an undertaking, that is carried out on land or water and, except where the context otherwise indicates, wholly within the Mackenzie Valley, and includes measures carried out by a department or agency of government leading to the establishment of a national park subject to the *National Parks Act* and an acquisition of lands pursuant to the *Historic Sites and Monuments Act*.

Environment - means the components of the Earth and includes:

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b).

Follow-up program - means a program for evaluating

- (a) the soundness of an environmental assessment or environmental impact review of a proposal for a development; and
- (b) the effectiveness of the mitigative or remedial measures imposed as conditions of approval of the proposal.

Harvesting - in relation to wildlife, means hunting, trapping or fishing activities carried on in conformity with a land claim agreement or, in respect of persons and places not subject to a land claim agreement, carried on pursuant to aboriginal or treaty rights.

Heritage resources - means archaeological or historic sites, burial sites, artifacts and other objects of historical, cultural or religious significance, and historical or cultural records.

Impact on the environment - means any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.

Mitigative or remedial measure - means a measure for the control, reduction or elimination of an adverse impact of a development on the environment, including a restorative measure.

Purposes

s.114 The purpose of this Part is to establish a process comprising a preliminary screening, an environmental assessment and an environmental impact review in relation to proposals for developments, and

- (a) to establish the Review Board as the main instrument in the Mackenzie Valley for the environmental assessment and environmental impact review of developments;
- (b) to ensure that the impact on the environment of proposed developments receives careful consideration before actions are taken in connection with them; and
- (c) to ensure that the concerns of aboriginal people and the general public are taken into account in that process.

Guiding Principles

s.115 The process established by this Part shall be carried out in a timely and expeditious manner and shall have regard to

- (a) the protection of the environment from the significant adverse impacts of proposed developments; and
- (b) the protection of the social, cultural and economic well-being of residents and communities in the Mackenzie Valley.

Determining Scope of Development

ss.117(1) Every environmental assessment of a proposal for a development shall include a determination by the Review Board of the scope of the development, subject to any guidelines made under section 120.

Factors to be Considered

ss.117(2) Every environmental assessment and environmental impact review of a proposal for a development shall include a consideration of

- (a) the impact of the development on the environment, including the impact of malfunctions or accidents that may occur in connection with the development and any cumulative impact that is likely to result from the development in combination with other developments;
- (b) the significance of any such impact;

- (c) any comments submitted by members of the public in accordance with the regulations or the rules of practice and procedure of the Review Board;
- (d) where the development is likely to have a significant adverse impact on the environment, the imposition of mitigative or remedial measures; and
- (e) any other matter, such as the need for the development and any available alternatives to it, that the Review Board or any responsible minister, after consulting with the Review Board, determines to be relevant.