



Mackenzie Valley
Environmental Impact
Review Board

December 11, 2007

Ms. Trish Merrithew-Mercredi
Regional Director General
Indian and Northern Affairs Canada
PO BOX 1500
YELLOWKNIFE NT X1A 2R3

Dear Ms Merrithew-Mercredi:

Integrating the Board Decisions into the INAC Monitoring and Enforcement Framework

The October 10-11th, 2007 Relationship Building Workshop brought together representatives from the Mackenzie Valley Environmental Impact Review Board (Review Board), all Land and Water Boards (L&WBs), several GNWT and federal departments, as well as staff and managers from Indian and Northern Affairs Canada (INAC). One of the stated objectives of the workshop was to identify challenges and opportunities for innovation, regulatory coordination and improvement. This was an excellent workshop and a number of areas were identified where follow up was required by Boards and government Departments alike.

One topic addressed in the workshop concerned INAC enforcement of both measures from reports of environmental assessment and terms and conditions developed by L&WBs for land use permits and water licences.

The Review Board made a presentation on the design and implementation of mitigation measures prescribed in its reports of environmental assessment. One of the major challenges identified was the lack of a regulatory home for many of these measures. Land and Water Boards also had the opportunity to discuss monitoring, compliance and enforcement of terms and conditions in permits and licences with your staff. These are not new issues. They have been the subject of discussions between the Boards and INAC in the past. However, in light of your Minister's recent appointment of a Special Representative to address Northern Regulatory Improvement, we suggest that further discussion regarding the coordination of Board processes with INAC compliance and enforcement activities is both timely and appropriate.

During the workshop, the concerns raised by the Boards about the implementation of their measures and terms and conditions were exacerbated by a presentation made by INAC staff which indicated that many of these provisions are not, in fact, being enforced.

To reinforce that concern, the Review Board estimates that only about 46% of the Review Board's measures accepted by the Minister of INAC are being implemented by regulatory authorities and that, of those, less than 50% are actually inspected for purposes of compliance or enforcement. At best, only 25 % of the Review Board's measures are having any effect on the impacts they were designed to mitigate. And even then the information is not being collected or reported so that the success of those measures can be evaluated. L&WBs share similar concerns.

Our observation is that INAC Land Use Inspectors may be applying a narrow interpretation of their inspection responsibilities and enforcement capabilities conditioned by their concern about the potential success of a prosecution based on the measure or term and condition in question. For instance, we were told that land use permit terms or conditions related to the protection of wildlife or fish are not being enforced by INAC. One example given of an unenforceable provision was a measure derived from the "caribou protection measures" developed by INAC itself as a result of wildlife concerns in the Keewatin in the 1980s. These measures have been in force and are widely used in land use permits for over 25 years.

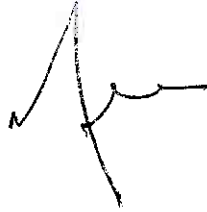
The Boards were told in essence that INAC inspectors will only enforce land use terms and conditions that are based directly on standardized language developed in reference to the *Mackenzie Valley Land Use Regulations* (MVLUR) section 26(1) and where a conviction in court is likely. If this approach has been developed as a priority for action by your department, this needs to be communicated to the L&WBs and the Review Board. It seems to the Boards that this conservative approach to enforcement may be focussed on a litigation context where strict interpretation of terms and conditions is the rule. We are concerned that this approach may sacrifice opportunities for securing compliance and environmental protection in favour of the certainty needed to enter the court room. This approach also overlooks the significant opportunities for compliance by Boards taking their own actions with project proponents (i.e., suspension or cancellation of licences or permits).

There are other implications which arise from the revelations resulting from the workshop. They raise questions for instance about INAC's own compliance with subsection 130(5) of the *Mackenzie Valley Resource Management Act* in respect of mitigation measures approved by your Minister. They may also raise questions about the primary goals of INAC's enforcement and compliance policies. Are they punishment oriented or compliance oriented? As mentioned above, if compliance is the goal, we would observe that use of the L&WBs suspension and cancellation powers could be more efficient, timely and effective than resorting to the courts. Unfortunately it appeared at the workshop as though your enforcement staff had given little thought to this option.

We believe that the goal of regulatory efficiency set out by Mr. Strahl can be served by better integration of the work of INAC enforcement personnel with the work of the Boards. We suggest that further discussion of these opportunities is needed and that such an effort should be initiated in the near future. Our Executive Directors are available to answer any questions you or your staff may have.

We urge you to convene a meeting of respective senior staffs to ensure measures, terms and conditions are fully implemented through the INAC monitoring and enforcement process.

Sincerely,



Willard Hagen
Chairperson GLWB and
Chairperson MVLWB



Larry Wallace
Chairperson SLWB



Violet Camsell-Blondin
Chairperson WLWB



Gabrielle Mackenzie-Scott
Chairperson MVEIRB

Copied to: Participants; MVRMA Relationship Building Workshop;
Yellowknife, NT; October 10-11, 2007

Neil McCrank; Special Representative
of the Honourable Chuck Strahl, Minister of INAC