

FAX

To: Mr. Vern Christensen
MVEIRB

Fax: 766-7074

Date: Jan. 31, 2008

Pages: 4, including this one

From: Lorraine Seale, INAC

Attached please find INAC's comments on MVEIRB's draft Reference Bulletin on MVEIRB s. 126(3).

Regards,

Lorraine

FROM THE DESK OF:

*Environmental Scientist
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January 31, 2008

Mr. Vern Christensen
Executive Director
Mackenzie Valley Environmental Impact Review Board
P.O. Box 938
Yellowknife, NT X1A 2N7

VIA FAX: 766-7074

Dear Mr. Christensen:

RE: Draft Reference Bulletin re: Procedures during the Review Board's consideration of making its own motion to refer a development to environmental assessment

Thank you for providing the opportunity to comment on the above-noted draft Reference Bulletin, dated December 2007. Indian and Northern Affairs Canada (INAC) would like to thank the Review Board for initiating this important work. We are pleased to provide our key comments for consideration and would also suggest that these be discussed with you further.

The draft Reference Bulletin acknowledges that referral powers under section 126 of the *Mackenzie Valley Resource Management Act* extend beyond just the Review Board. Accordingly, INAC suggests that the s.126 process addressed in part here by the Review Board's draft Bulletin be discussed with all bodies who also have referral powers, specifically, those listed in ss.126(2). In addition to understanding and resolving specific concerns from all parties who might be directly affected by the Bulletin, a discussion process would help ensure that the Review Board's internal process is harmonized with the processes that other bodies might undertake to determine whether to exercise their section 126 discretion to refer an application to environmental assessment. The format and objectives of such a discussion process could be developed by all interested parties. INAC would be pleased to participate in such discussions.

If you have any questions about these comments, please do not hesitate to contact Lorraine Seale in Environment & Conservation at 669-2590, or me at 669-2647.

Sincerely,

David Livingstone
Director, Renewable Resources and Environment

INAC comments on draft Reference Bulletin

Introduction:

To be consistent with the intent of the *Mackenzie Valley Resource Management Act*, the Review Board should clarify throughout this, and other sections, that while it has the discretion under sub-section 126(3) to conduct an environmental assessment of a proposal for development on its own motion, it is not an appellate or review body of preliminary screening decisions. The Review Board may exercise its own independent discretion to refer a matter to environmental assessment notwithstanding any determination made by the regulatory authority on a preliminary screening, and this discretion applies even if a preliminary screening has not been commenced, or if commenced has not been completed. The Review Board does not have the authority to oversee the preliminary screening process or override the decisions of preliminary screeners.

The Statutory Framework:

Referring a Proposed Development to EA on its own motion

Ss.126(4) states that ss.126(2) and ss.126(3) "apply even if a preliminary screening has not been commenced **or, if commenced, has not been completed.**" [emphasis added]. The MVRMA does not make clear what is required to "complete" the preliminary screening process. The Review Board's bulletin should make clear the distinction between a preliminary screening decision, and a regulatory decision, and that the bulletin is intended to address all of the steps that should be undertaken before a regulatory decision is made and before a permit and/or license is issued. The bulletin could provide some clarity on what the Review Board considers the elements of this process, as well as the role of the various parties in this process.

INAC understands that the Review Board currently has in place a process to review a development application in advance of the preliminary screening report, and that this process includes steps such as gathering information while the preliminary screening is taking place, and receiving copies of community documents as they become available to the Land and Water Board. INAC suggests that the Review Board set out this existing process, along with any proposed changes, in the Reference Bulletin. It may be useful to include the informal lead coordinating role often assumed by Land and Water Boards in the preliminary screening process.

INAC also encourages the Review Board to consider setting out in the Reference Bulletin the process that the Board would undertake if it refers a proposal to environmental assessment that has not been the subject of a preliminary screening as set out in Section 126(4).

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The three day "Pause Period"

This overall section needs greater clarity with respect to the process during this "pause period". This section should specifically clarify that the pause period is intended to be applied after the preliminary screening decision is made, but before the regulatory decision is made and before a permit and/or licence is issued. Since the "pause period" is intended to allow the Review Board and other parties an opportunity to exercise their s.126 discretion, the Review Board should engage in discussions with all the parties who have s.126 referral powers. The parties should discuss the specific process that the Review Board will follow when it "might" under ss.126(3), refer a project to environmental assessment, and what constitutes a "reasonable" amount of time to do so.

The "pause period" is based on a "reasonable" amount of time within which the Review Board will provide written notice to the preliminary screener that it will either exercise its authority under ss. 126(3) or notify the preliminary screener that it requires additional time to make a decision under ss. 126(3). To address instances when the Review Board requires additional time, INAC encourages the Review Board to establish in the Reference Bulletin target timelines by which it will make a decision whether or not to refer the application to environmental assessment.

Finally, the Review Board should make clear in its bulletin that the timelines set out in the *Mackenzie Valley Land Use Regulations* cannot be used to prevent the Review Board from properly exercising its authority under ss.126(3) of the MVRMA. For more certainty and clarity, amendments to the regulations may be advisable.