



September 25, 2008

The Honourable Chuck Strahl, P.C., M.P.
Minister, Indian and Northern Affairs Canada
MINISTER'S OFFICE
10 Wellington St.
Gatineau, P.Q., K1A 0H4

Dear Minister Strahl:

Re: Report entitled "Road to Improvement - The Review of the Regulatory Systems Across the North" by Neil McCrank; May 2008

The Mackenzie Valley Environmental Impact Review Board received the above report on July 17th. We appreciated the briefing that Review Board representatives received from Mr. Neil McCrank and senior Indian and Northern Affairs Canada (INAC) staff at that time.

The Review Board would first of all like to compliment Mr. McCrank on completing this report in the compressed timeframe he was given to review the northern regulatory system. It contains many helpful recommendations.

It is our understanding that your Department and other responsible government departments are now reviewing Mr. McCrank's report and that shortly they will be recommending an action plan to you on how the government should move forward with improvements to the northern environmental impact assessment and regulatory system.

To assist in developing the government action plan, the Review Board wishes to also provide its comments and insights on the recommendations in the "Road to Improvement" report and to offer complementary advice on how INAC might proceed to address the highest priority issues in the most timely and effective manner.

The Priorities

Restructuring Proposal

We applaud the recommendation within the "Restructuring Proposal" to make the Mackenzie Valley Environmental Impact Review Board the final decision maker on those matters within its jurisdiction. Mr. McCrank clarified that the wording "final recommending body" used in his

report should have stated “final decision maker” as written in the related recommendation regarding the Mackenzie Valley Land and Water Board.

Mr. McCrank also clarified that if this recommendation was implemented - Recommendation #17, regarding the development of a protocol for dealing with S.130 decisions (i.e. post report of environmental assessment “consult to modify” decisions), would no longer be needed as S.130 decisions would no longer be required.

This would be a major improvement. Not only would it significantly shorten the time required before regulators could proceed with the permitting or licensing process (which is sometimes held in abeyance for months or even years) following completion of a report of environmental assessment. It would also release a significant amount of resources internal to government departments for reallocation elsewhere in the overall regulatory system.

Recommendation #1 Land Use Plans

Giving priority to completing and implementing land use plans in all areas of the NWT will be a significant improvement as well. An inclusive process for developing land use plans is essential for identifying and managing competing land uses across the NWT including those areas where land claims have not been settled. A significant source of public concern regarding proposed developments will then be addressed; the result being greater process certainty for developers and fewer referrals of development applications to environmental assessment.

Other High Priority Recommendations

The Review Board agrees strongly that:

- Recommendation 5 to commit funding to the Cumulative Impact Monitoring Program;
- Recommendation 12 to develop an MOU concerning the implementation and enforcement of conditions to licenses and permits to be developed;
- Recommendation 13 to order a specific review of the MVRMA (for process certainty and administrative efficiencies – not to change the spirit and intent of the legislation)
- Recommendation 15 regarding a timely board appointments process; and
- Recommendation 17 to establish a process protocol for S.130 decisions (should the Review Board not become the final decision maker within its jurisdiction per the “Restructuring Proposal” mentioned earlier);

would significantly improve the northern environmental impact assessment and regulatory system.

Continuing Barriers to Regulatory Improvement

The MVRMA Partners

While the *Mackenzie Valley Resource Management Act* (MVRMA) is federal government legislation it did arise from land claims and in partnership with the Government of the Northwest Territories. As a result, any restructuring or change to the legislation will need the concurrence and collaboration of all MVRMA Partners. Successful implementation of regulatory change in the Mackenzie Valley will require the support of the GNWT and land claimant organizations in addition to INAC on behalf of the federal government.



Going forward, and in the spirit of promoting continual improvement of the regulatory system, it is recommended that the MVRMA Partners also meet annually or biannually with representatives of the MVRMA Boards to take stock of how well the system is working and what should be improved. MVRMA Boards would become more accountable to all of the “owners” of the MVRMA for the effective and timely implementation of the legislation. In turn, the MVRMA Partners would likely become frequent allies in pursuit of timely and incremental process improvements.

Getting the Right Capacity in the Right Places

The “Road to Improvement” report did not address the human resource, financial and institutional capacity needs of the current regulatory system. Significant additional capacity is required for Boards to operate in an effective and timely manner as required by the *Act*.

The most significant capacity issue for Boards is the lack of stable and adequate funding for Boards to carry out its responsibilities. Through the Gwich’in Land Claim Implementation Plan the Review Board is assured of \$2.4 million annually however the funding required to deliver quality and timely environmental impact assessments in the Mackenzie Valley is in excess of \$5 million annually.

Next is the lack of a transparent process to monitor, report and evaluate the implementation of measures arising from approved reports of environmental assessment. This is a critical gap in the regulatory process. There is a fundamental lack of capacity within government and resource management boards to coordinate and ensure the implementation of measures and the related terms, conditions and other authorities are actually carried out and ultimately evaluated for effectiveness. It is impossible to know how well Mackenzie Valley resources are being managed without proper monitoring, reporting and evaluation of the results of management actions taken.

The lack of a formal program of participant funding for the environmental impact assessment process is a significant capacity issue for aboriginal and community organizations including non-profit organizations. Proposed developments demand the participation of aboriginal and community organizations in the resource management process even though they often have limited or no capacity to do so. If those organizations cannot participate in the process they risk being unfairly impacted. The fairness of the resource management system is then drawn into question. Litigation can then draw out the process much longer than otherwise would have been the case.

The lack of resources required for Boards to be compliant with the *Official Languages Act of Canada* and to provide equitable aboriginal language services is another important capacity issue. The Review Board continues to lack the resources to meet the requirements of this important legislation passed by Parliament.

Recommendation #2 identifies the need for a policy on S.35 consultation roles and responsibilities. In our view a workable policy has already been developed for the Mackenzie Valley. What is required is sufficient capacity within INAC and other government departments to carry out the required S.35 consultation early in the regulatory process. Significant process delays would be avoided. The regulatory and environmental impact assessment processes would be much better informed at a much earlier stage. Aboriginal concerns would then be addressed earlier resulting in fewer issues to consider and less time for both processes to occur.



Some Final Thoughts

It is our recommendation that INAC develop a short and long term action plan to improve the northern regulatory system. The capacity and funding issues cited in this letter are critical short term requirements that must be addressed to make the regulatory system operate in a quality and timely manner.

Without transparent monitoring, reporting and evaluation of results we will continue to be unable to determine whether the regulatory system is working properly or effectively at all.

The Review Board is moving forward concurrently with a number of related initiatives to improve process certainty, timeliness and effectiveness. They include a comprehensive review of the environmental impact assessment process for small, medium and large developments; as well as reviewing and updating Board Guidelines to assist developers and other stakeholders. Noteworthy is the development of Cultural Impact Assessment Guidelines and a guidance document entitled "Community Engagement for Developers entering the Environmental Assessment Process".

The Review Board is keenly interested in the Northern Regulatory Improvement Initiative and is eager to assist. I trust our comments and advice will be helpful in developing the action plan for advancing the "Road to Improvement" report.

Sincerely,



Richard Edjericon
Chairperson

C: Trish Merrithew-Mercredi
Regional Director General
INAC – NWT Region

Stephen Traynor, Director
Resource Policy and Programs Directorate
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