



NOV 30 1999

November 30, 1999

Mr. Gordon Lennie
Chair
Mackenzie Valley Environmental Impact Review Board
5102-50th Ave.
P. O. Box 938
Yellowknife NT X1A 2N7

Re: Draft Terms of Reference for the Proposed BHP Diamonds Inc. Sable, Pigeon and Beartooth Project

Dear Mr. Lennie:

The NWT Chamber of Mines (Chamber) would like to comment on the draft terms of reference (ToR) issued by the Mackenzie Valley Environment Impact Review Board (MVEIRB) to BHP Diamonds Inc. (BHP) on November 8, 1999.

Members of the Chamber are concerned with both the quality of the draft and scope of the environmental assessment it proposes. More globally, the Chamber is deeply concerned about the precedent this Environmental Assessment sets and the impact it will have on mineral development in the NWT. Many of our members inform us that regulatory uncertainty is one of the largest risk factors they evaluate when considering potential investment in the NWT. By the time the regulatory phase is complete it will have taken BHP over two years to permit three years of additional ore reserves at an already-permitted, operating mine.

The October 1999, Sable, Pigeon and Beartooth project description is BHP's third version. Each of the versions created since November 1998 was done in response to the questions by government, and later by the MVEIRB. At the August 25, 1999 meeting between the Responsible Agencies (RAs), MVEIRB staff and the company, the RAs made it quite clear that the February 1999 project description provided adequate documentation to scope the environmental assessment. Government experts indicated that they thought it was unnecessary to have another version of the project description. Their preference was to proceed with the assessment. The staff of the MVEIRB disagreed and directed BHP to produce the third draft, which was to answer additional questions from the MVEIRB and include input from the communities. BHP complied and

produced the October draft, which they submitted to your board on Friday, November 5, 1999.

On Monday, November 8, 1999 the MVEIRB released its draft ToR along with BHP's November version of the project description report. While we applaud the staff of the board for trying to be expedient, it is unfortunate they did not take into account the new project description: the one requested by the board. If some time had been taken to read and understand the project description then the staff would have been able to more clearly discern the scope of the development and more tightly define the scope of assessment.

With regard to the quality of the draft, it appears that the document was patched together from a variety of previous ToR's. While the reference in the draft to a pipeline is the most conspicuous, it is not the only one. Pulling appropriate questions from other ToRs is reasonable. It is not acceptable however, to have a draft ToR go out to the public for comment that is a patch-work of past reviews that has been reassembled in a disorganized and repetitive manner.

In framing the ToR, the MVEIRB has seemingly treated the proposed Sable, Pigeon and Beartooth Proposal as a new operation. The reality is that the proposal is a relatively small addition to an operating mine which has a sound record of compliance. In drafting Section 4 of the ToR, Additional Directions for the Environmental Assessment, the MVEIRB fails to respect section 127 of the Mackenzie Valley Resource Management Act (MVRMA) and consider past reviews. This is evident in the treatment of BHP as if it were an unknown entity in Section 4 of the ToR. The company has been active in mineral exploration in the Canadian Arctic since the mid-1980s. Its record of regulatory compliance over the last 15 years in the NWT and Nunavut is excellent. BHP further established its corporate *bona fides* as a mine operator during the 1994 to 1996 EARP review of its NWT Diamonds Project Impact Statement (EIS). This includes the company's corporate record and was provided to your board in May of 1999 by BHP. They are therefore already part of the public record of this review. If the MVEIRB feels it is appropriate to up date the record then it would be reasonable, for instance, to ask BHP in the ToR to provide a summary of water inspections by DIAND for both the construction and operations phases of the Ekati Mine. This would give the board a clear picture of the company's compliance record as well as how it employs adaptive management to unforeseen incidents.

It is evident from the MVEIRB July 2, 1999 report that it has chosen four topics from the preliminary screening by the Responsible Agencies (RA) of BHP's proposed Sable, Pigeon and Beartooth pipes as a basis for this review:

- unknown impact to the Exeter water drainage basin,
- cumulative impact considerations in relation to the existing BHP operations and the proposed Diavik mine,
- public concern, and
- the need to ensure a broader review of the proposed development.

Members of the Chamber are concerned that the draft ToR does not tightly define a systematic assessment that would address the potential concerns expressed by the preliminary screening. Assessing the four above-mentioned items must be the *raison d'etre* for this review.

We would briefly like to examine each of the four elements of the screening:

Unknown impacts

Based on a review of BHP's February 1999 version of the project description, the Chamber feels it is possible that some readers could have been confused about the direction of water flow from the proposed Sable operation. The company, in its project description, has informed us that, in fact, several of the aboriginal groups were concerned that drainage from Sable might affect both the Exeter Lake and Ursula Lake sub-drainages of the Coppermine River system. This question has been clarified in Section 4 of BHP's October 1999 Project Description. Figure 4.1-4 provides an explicit diagram of the watershed impacts of Sable.

The other potential impacts from the development of Sable, Pigeon and Beartooth are largely predictable and mitigable given that BHP is proposing to use established technology and methods. The operation of open pit mines on the barrenlands has been recently considered in both the 1996 EARP Report and more recently in the 1999 Diavik CEAA Comprehensive Study Report.

Section 2 of the ToR Scope of Development seems to be once again asking for a physical project description. The October 1999 version of the BHP project description provides a comprehensive description of the proposed development. Using the existing BHP project description, the MVEIRB should have focused Section 2 of the ToR on the potential for specific impacts that are *unique and specific* to *this* proposal.

Cumulative Effects and the Need for a Broader Review

Given the recent court cases regarding cumulative effects assessment, the MVEIRB should have provided much tighter wording in Section 3.4.1 – Cumulative Impacts of the ToR. Courts are starting to define the scope of cumulative effects assessment. The generic description in Section 3.4.1 of the ToR provides the company with almost no direction. The MVEIRB should have issued cumulative effects guidelines. This is an important point as there is a difference between CEAA and the MVRMA with regard to the way future impacts are handled. May we suggest that the board consider including in the final ToR a paragraph similar to the third paragraph on page 1-5 of BHP's October version of the Project Description. It would appear that the company uses the recent Sunpine decision to help define the scope of the cumulative effects assessment necessary here. BHP's interpretation would limit the scope of cumulative effects assessment in a manner the Chamber would like to suggest is appropriate given the scale of the proposed incremental development. Finally, it is the belief of the Chamber, that BHP's suggested scope for the cumulative effects assessment would in fact largely eliminate the fourth point of the preliminary screening, which suggests the need for a broader review of the proposed project. The upcoming assessment should be limited to the potential physical impacts of the proposed incremental development. The only major socio-economic

impact would be the negative effect of the project not proceeding and the mine closing earlier than necessary. This would have a profound impact on the economy of the north.

Public Concern

It is our understanding that when BHP asked the RA's at the August 25, 1999 meeting how they had judged public concern during the preliminary screening, the answer was something to the effect that ... "we perceived there might be public concern". The Chamber would like to suggest that that response lacks any of the rigor that it is reasonable to expect in a review of this type. We believe that such a facile analysis is unacceptable. To date the MVEIRB has not issued any guidelines, based on the MVRMA, on how to determine whether or not there is significant public concern. Without a clear understanding of the MVEIRB's expectations for such an analysis, how does the MVEIRB expect the company to effectively address the issue in its upcoming Environmental Assessment document? During the board's recent review of the Diavik Comprehensive Study Report, the board seems to have considered two letters to indicate significant public concern. The Chamber would hope that in the present review, the question of public concern be addressed in a more scientifically defensible manner.

We believe that the authors of the ToR have not adequately taken into account the recent EARP review of the Ekati Mine or the CEEA review of the Diavik Diamond Project. These high level assessments provide a regional baseline for the MVEIRB to build on. In the Chamber's opinion, the November 8, 1999 ToR does not set the stage for a scope of assessment which is appropriate for the Sable, Pigeon and Beartooth review. This, after all, an assessment is of a small incremental development at a permitted operating mine.

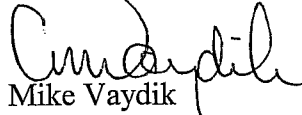
Conclusion

We feel that the process of developing ToR for this project would have been greatly assisted by holding public hearings. We are concerned that the MVEIRB continues to do its work largely behind closed doors, without published guidelines and with little public input. Only through some open and frank discussions will either the public, industry or the board gain a better understanding of the process of environmental assessment in the north. We are concerned that a legalistic and stilted framework for EA is arising which was not envisioned by the legislators nor is it one which serves the real needs or traditions of northerners.

As a proponent of mineral development in the NWT, we must ask if all future companies can expect this sort of treatment. Regulatory uncertainty is adding to the cost and timelines of exploring for, constructing and operating mines in the north. The NWT has traditionally been a territory which has prospered and grown from the mineral resource sector. It is our fervent hope that the final ToR do not signal a change in our ability to

responsibly manage our resources. We believe that a reasonably scoped review will give northerners assurance that this expansion of an existing project can go ahead in an environmentally responsible manner while providing industry with the confidence that the regulatory regime in the NWT is predictable, effective and efficient.

Yours truly,
NWT Chamber of Mines


Mike Vaydik
General Manager

- c. Hon. Robert Nault, Minister, DIAND, Ottawa
Hon Stephen Kakfwi, Minister, RWED, Yellowknife