

BHP Billiton Diamonds Inc.
Operator of the EKATI Diamond Mine



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Mackenzie Valley Environmental Impact Review Board
Box 938,
Yellowknife, NT X1A 2N7

Attention: Renita Jenkins
Manager of Communications

Re: Comments on Draft Reference Bulletin regarding “Procedures during the Review Board’s consideration of making its own motion to refer a development to environmental assessment”

The Mackenzie Valley Environmental Impact Review Board (the “Review Board”) recently requested public comment on a Draft Reference Bulletin regarding “Procedures during the Review Board’s consideration of making its own motion to refer a development to environmental assessment” (the “Draft Bulletin”). What follows are the comments of BHP Billiton Diamonds Inc. (“BBDI”) regarding the Draft Bulletin:

- Subsection 126(3) is an extraordinary procedure that should be used sparingly and with the utmost of respect and deference to the regulatory authority charged with making these decisions.
- The Draft Bulletin on page 3 states that “it is preferable . . . to ensure that the highest quality information is available prior to considering the exercise of its discretion pursuant to subsection 126(3).” BBDI agrees with this sentiment and is of the view that the only way to ensure that the Review Board has the “highest quality information” is to provide the proponent with an opportunity to respond to any submissions or suggestions the Review Board may receive regarding the exercise of its discretion whether to proceed with an environmental assessment on its own motion. Additionally, the legal concept of procedural fairness requires that the proponent be given an opportunity to make its case to the Review Board. It is BBDI’s submission that proponents be provided with any submissions urging the Review Board to exercise its discretion, and that the proponent be given an opportunity to respond to such submissions. This has the benefit of providing the Review Board with the highest quality information, as well as fulfilling the Review Boards obligations of procedural fairness.
- BBDI agrees with the concept of a “Three Day Pause Period” described on page 4 of the Draft Bulletin. It should be made clear, however, that if three days have

past without any notification from the Review Board, that is conclusive evidence that the MVEIRB has chosen NOT to exercise its powers pursuant to s.126(3).

- On page 5 of the Draft Bulletin, it states that: “Consequently, until the Review Board makes a decision a license, permit or authorization must not be issued.” This concept is troubling as it could essentially stall the decision making process for an indeterminate period of time. BBDI’s submission is that the Review Board should limit its time to “consider” to an additional 5 days. It was not intended that a decision pursuant to subsection 126(3) be the equivalent of a formal hearing on whether the MVEIRB's discretion should be exercised - the "consideration" time is simply to reflect that there may be practical difficulties in getting the board together to make a decision within the time allotted, or to gain access and review the information that was before the regulatory authority. That process should take no longer than an additional 5 days.

Please contact Laura Tyler at (867) 669-6156 to clarify any of the above comments and submissions.

Sincerely,

BHP Billiton Diamonds Inc.

A handwritten signature in blue ink, appearing to read "Ricus", with a stylized flourish extending to the right.

Ricus Grimbeek
President and Chief Operating Officer
EKATI Diamond Mine