

Louie Azzolini

From: Joe Acorn
Sent: Wednesday, May 29, 2002 2:54 PM
To: Louie Azzolini
Subject: FW: De Beers Terms of Reference and Rules of Procedure

FYI

Joe

-----Original Message-----

From: Joe Acorn
Sent: Tuesday, May 28, 2002 2:46 PM
To: 'garth@nt.sympatico.ca'
Subject: De Beers Terms of Reference and Rules of Procedure

Hi Garth,

Attached is the Rules of Procedure for the De Beers EA. They say "draft" but they have been adopted as is for this EA. Better some Rules than no Rules.

Also the web-site link below is the Terms of Reference. Other documents concerning this EA are also posted to our web-site.

Sorry for the delay. I couldn't find the Rules on Louie's computer.

<http://www.mveirb.nt.ca/Registry/EADeBeers/RevisedDeBeersToR.pdf>

Joe Acorn

-----Original Message-----

From: Louie Azzolini
Sent: Tuesday, May 28, 2002 2:26 PM
To: Joe Acorn
Subject:

870

5/29/2002

**Rules of Procedure
for
The Environmental Assessment of the**

***De Beers Canada Mining Inc.
Snap Lake Diamond Project***

Issued:
September 16, 2001

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INTRODUCTION

1. These are the Rules of Procedure for environmental assessment and environmental impact review proceedings (the “Rules”) of the Mackenzie Valley Environmental Impact Review Board contemplated by s. 30 of the *Mackenzie Valley Resource Management Act* (the MVRMA or the Act).
2. These Rules will be used to ensure that the Review Board’s environmental assessment and environmental impact review proceedings fulfill the spirit and principles of the MVRMA, particularly Part 5 of the Act.
3. These Rules apply to all proceedings of the Board.
4. Any words or terms defined in the MVRMA have the same meaning when used in these Rules.
5. These Rules shall be interpreted in a manner consistent with the MVRMA.
6. The common law duty of procedural fairness applies to all decision-making by and proceedings of the Review Board.

GENERAL RULES FOR REVIEW BOARD PROCEEDINGS

This section applies to all proceedings of the Review Board: proceedings without hearings, proceedings with hearings - technical and proceedings with hearings - community sessions.

Definitions

“clarification” means the process by which the Review Board seeks explanation of a matter on the public registry without seeking new evidence or information.

“developer” means the person or organization responsible for a development proposal that is subject to environmental assessment or environmental impact review;

“directly affected party” includes a developer, a first nation affected by a proposed development, any responsible minister, a designated regulatory agency; or the owner or occupier of any land affected by the development.

“environmental assessment” means an examination of a proposal for a development undertaken by the Review Board under section 126 of the Act.

“environmental impact review” means an examination of a proposal for a development undertaken by a review panel established under section 132 of the Act.

“hearing” means that portion of an environmental assessment or environmental impact review proceeding where the Review Board receives information/evidence orally from the parties and the members of the public.

“information request” means the written questions exchanged in the course of an environmental assessment or environmental impact review.

“intervener” means a party who is not a directly affected party or member of the public that has requested permission in advance to participate in an environmental assessment or an environmental impact review hearing.

“member of the public” means a person who is not an intervener or directly affected party, who is allowed to participate in an environmental assessment or environmental impact review hearing but has not asked for permission in advance of the hearing.

“Review Board” means the Mackenzie Valley Environmental Impact Review Board.

“party” means a directly affected party, intervener, or specialist advisor participating in an environmental assessment or an environmental impact review proceeding.

“procedure” means any direction the Review Board issues, at any time in the proceeding including but not limited to, work plans or terms of reference for an environmental assessment or environmental impact review proceeding.

“proceeding” refers to a process adopted by the Review Board to complete an environmental assessment or an environmental impact review or any part thereof, as outlined in Part 5 of the MVRMA.

“public notice” means a public announcement made through newspaper, radio, community poster or other public means, according to whatever reasonable terms are set by the Review Board.

“Request” means a request made under Rules 50 or 54.

“specialist advisor” means any agents, advisors or experts engaged by the Review Board as are necessary for the proper conduct of Review Board proceedings.

Notice and participation in proceedings

7. The Review Board shall, upon receipt of a referral for environmental assessment or an order to conduct an environmental impact review, provide public notice of the proceeding. The notice will include a brief description of the development proposal referred to the Board and identify a and the point of contact within the Review Board for the proceeding.
8. Subsequent to providing notice of a proceeding, the Review Board will publish a public notice of opportunities to participate in any proceedings. This notice may include but is not limited to dates for submission of documents, dates for the filing and disclosure of information, and dates for filing intention to intervene.
9. A directly affected party, other than the developer, shall notify the Review Board of their intention to participate in the proceeding.
10. Any party or member of the public may provide written information or comments to the Review Board at any time during the proceeding. Parties to the proceeding shall be given the opportunity to respond to such information comments before the conclusion of the proceeding.
11. Any party may appear on their own behalf and are encouraged to do so in any Review Board proceeding. Parties represented by agents or counsel shall notify the Executive Director as soon as practicable of the identity of their representative. If a change in representation takes place, the Executive Director shall be informed as soon as practicable and in any event no later than 10 days prior to a hearing.
12. All the Review Board's proceedings are, unless otherwise ordered by the Review Board, public proceedings.

Interveners

13. A notice of intention to intervene in a proceeding shall be filed with the Review Board in a form consistent with the notice referred in Rule 8. The notice of intention shall be in writing and shall clearly state the reason for the proposed intervention, the role that the intervener proposes to play and outline any information that the intervener may provide during the proceeding.
14. The Review Board may request additional information or clarification from any person seeking intervener status and may direct interveners with similar interests to present a joint intervention.

Conduct of Review Board Proceedings

15. In appropriate circumstances, the Review Board may dispense with, vary or supplement these Rules.
16. In particular the Review Board may, on its own or at the request on any party, lengthen or shorten the time for any action to be taken in an environmental assessment or environmental impact review proceeding subject to any conditions the Review Board may impose.
17. Where reference is made to a number of days, it shall mean calendar days. Where a time fixed falls on a holiday or a Saturday or a Sunday, the time fixed shall extend to the following working day.
18. The Review Board may issue procedures for an environmental assessment or environmental impact review proceeding.
19. Where any issue arises during the course of a proceeding, the Review Board may take any action necessary consistent with these Rules or permitted by law in order to enable it to fairly and effectively decide on the issue.
20. Where there is a conflict between these Rules and any directions on procedure issued by the Review Board, the directions on procedure prevail.
21. All requests, filing of information and contact in relation to a proceeding shall go to the Review Board through the Executive Director of the Review Board or the environmental assessment officer designated by the Executive Director.
22. The Review Board may request additional information from any party to a particular proceeding at any time.
23. The Review Board may engage specialist advisors to provide advice and information relevant to and necessary for decision making by the Review Board in any proceeding. Any information received from specialist advisors by the Review Board shall be disclosed to all parties when it is received, and before the conclusion of a hearing, specialist advisors may be subject to questioning by any or all parties to the proceeding.
24. Any party or member of the public has the responsibility of introducing information or evidence to support their position. Any party or member of the public seeking to convince the Review Board of any point or position during a proceeding bears the burden of proof in so doing.
25. Copies of any written submission shall be made available to all parties by the Review Board and all parties to the proceeding are given an opportunity to respond to the

comments or written submissions and, in the case of an oral presentation, ask questions of the person providing the comments.

The Record and Privacy Matters

26. The record of evidence in a Review Board environmental assessment or environmental impact review proceeding is opened when the matter is referred to the Review Board for assessment or when the Review Board exercises its discretion under section 126(3) of the Act.
27. No information will be accepted for the Review Board's consideration in a proceeding after the record has been closed, unless a request to reopen the record is made and approved by the Review Board. The Review Board may seek clarification on any evidence on the record without causing the record to be re-opened after it is closed.
28. The Review Board is subject to federal Access to Information and Privacy applicable legislation. Unless a request to protect the confidentiality of information is filed with and approved by the Review Board, all information filed with the Review Board will be placed on the public registry.
29. The Review Board will notify parties to a proceeding of any request for the filing of confidential information and will deal with any issues that arise accordingly.
30. All relevant information received by the Review Board from the time the record is opened until the date set for the closing of the record by the Review Board in its directions for the proceeding will be considered in Review Board's decision.
31. If, after an environmental assessment proceeding, further examination of a proposed development by way of an environmental impact review takes place, the Review Board will transfer all information in the record from the assessment proceeding to the record for the environmental impact review proceeding.

Translation

32. The Review Board may, at the developer's cost, direct the translation into an aboriginal language(s) the following documents:
 1. the Executive Summary of the Environmental Assessment Report;
 2. the Executive Summary of the Environmental Impact Statement; or

3. any relevant information generated by the developer that, in the Review Board's opinion is considered necessary in order to conduct a fair proceeding.
33. A developer shall provide the number of translated copies directed by the Review Board. Translated materials may, subject to direction from the Review Board, be in the form of either written material or audio tape.
34. The Review Board may direct any party to a proceeding, at their cost, to provide translation in written or audio tape.

Admissibility of Evidence/ Information and Disclosure

35. In conducting a proceeding, the Review Board will, where appropriate, allow the admission of information that would not normally be admissible under the strict rules of evidence.
36. To the extent consistent with the duty of procedural fairness, the Review Board will emphasize flexibility and informality.
37. The Review Board shall seek and fully consider first nations' traditional knowledge including oral history in its proceedings.
38. The Review Board may make appropriate arrangements to secure information from or hear the testimony of an elder or the holder of traditional knowledge at any time during its proceedings.

The Exchange of Evidence or Information in a Proceeding

39. Consistent with the timetable established in the procedure, disclosure of evidence and information to be relied on during a proceeding is mandatory for all parties. Failure to disclose evidence or information as required by these Rules may result in the Review Board ruling that the evidence or information is inadmissible in the proceeding.
40. The Review Board may order an exchange of information among the parties to a proceeding in order to expedite the exchange of information and ensure that the proceeding, including a hearing, is focused and efficient.

Information Request Rules

41. The Review Board may seek information from any party to a proceeding at any time by way of a written information request.
42. Parties to a proceeding may seek and exchange information by way of information requests at any time until completion of the technical review phase of a proceeding.
43. The Review Board may authorize additional information requests by any party after the completion of the technical review phase of a proceeding.
44. All information requests are issued under the Review Board's authority.
45. Any dispute over the need for or the relevance of information requested in the information request shall be resolved by the Review Board.
46. Anyone wishing to file evidence/ information with the Review Board with respect to the proceeding shall provide sufficient copies of that evidence/ information for distribution by the Review Board to the parties to the proceeding.
47. The provision of information to the parties to the proceeding, shall be effective, if done by way of personal delivery, by mailing or by electronic transmission as directed by the Review Board.
48. Proof of delivery of the information, if required, may be provided by affidavit, by document showing electronic transmission and receipt by another party or by filing of double registered return cards with the Executive Director.
49. At the discretion of the Review Board, delivery of information may be deemed effective on the day it is delivered, 10 days after mailing by regular post to another party or at the discretion of the Review Board, delivery is deemed effective three days after it was sent by registered mail.

Requests for Rulings by the Review Board

50. Any issue that arises in the course of a proceeding that requires a decision or order from the Review Board shall be brought to the Review Board's attention by way of a Request

in writing with a clear and concise statement of the relevant facts, the decision or order being sought and the reasons why the decision or order is needed.

51. The Request shall be filed with the Executive Director. The Executive Director shall ensure that the Request is provided to all parties no later than five days before the Review Board considers the Request to allow parties to respond.
52. A party wishing to respond to a written Request shall provide a written response and supporting documents no later than two (2) days before the Request is scheduled to be heard by the Review Board. The Executive Director shall ensure that all parties are provided with the party's response. Parties may provide a written response no later than close of business one (1) day before the Request is scheduled to be considered.
53. The Review Board may vary any time period prescribed for the filing and hearing of a Request or a response after consultation with the parties.
54. A Request may be heard by the Review Board with some members or parties participating via teleconference.

Site visits

55. At any time during a proceeding, the Review Board may, schedule a site visit to the proposed development.

Failure to comply with the rules

56. Where a party to a proceeding has not complied with these Rules, procedure or a direction in a proceeding issued by the Review Board, the Review Board may:
 - (a) adjourn or stay the proceeding until satisfied that such requirement has been complied with; or
 - (b) take such other steps as it considers just and reasonable, including withdrawing the status of the party in the proceedings.

PROCEEDING WITHOUT A HEARING

This section covers proceedings that will be conducted without a hearing.

57. The Review Board may, in its discretion, order that all or portions of the proceeding be conducted by way of written submissions.
58. All parties and members of the public to the proceeding, may provide written evidence or information to the Review Board. This evidence or information shall be provided, consistent with procedure issued by the Review Board, to the Executive Director or designated environmental assessment officer.

PROCEEDING WITH A HEARING

This section describes the hearings process for environmental assessment and environmental impact review.

Call for a hearing

59. Where it appears that a hearing may be required, the Review Board shall determine the requirement for a hearing in a proceeding by means of a public notice. The public notice shall be published within 14 days of the notice of proceeding. Twenty-one (21) days will be allowed for a response to the public notice. All responses shall be addressed to the Executive Director.
60. The Review Board reserves the right to cancel a hearing at any time.

Hearings General

61. The Review Board may issue supplementary directions consistent with these rules to ensure the efficient conduct of a hearing.

Notice

62. When a proceeding is to include a hearing, the Review Board shall, at least 45 days in advance of that hearing, ensure that written notice of the date of a hearing is given to the parties to the proceeding and to the public.
63. The notice of hearing shall contain the following information:
 - i) the date, time and place of the hearing;
 - ii) the matters to be considered at the hearing;

- iii) the right of persons not directly affected parties to intervene, the information that must be provided by that notice and the date by which it must be filed; and
 - iv) the date by which information to be considered in the hearing must be filed and may contain any other relevant information as determined by the Review Board.
64. Notice of any preliminary, jurisdictional or constitutional issue to be raised in a hearing shall be filed with the Review Board at least 25 days before the scheduled hearing date. The Review Board shall ensure that all parties are notified of the issue.

Language of a Hearing

65. The Review Board may, in its discretion, arrange for any hearing to be electronically recorded or for oral translation services to be provided.
66. Hearings will be conducted in English. Where appropriate and necessary, simultaneous oral translation into an aboriginal language of the Mackenzie Valley, or from an aboriginal language of the Mackenzie Valley into English, may be arranged by the Review Board.
67. Hearings will be conducted in English. Where appropriate and necessary, simultaneous oral translation into French, may be arranged by the Review Board.

Parties

68. Parties shall file notice with the Executive Director of their intention to participate in the hearing no later than 25 days prior to the hearing.
69. Any party may appear in a hearing on their own behalf. Parties represented by agents or counsel shall notify the Executive Director no later than ten (10) day prior to the *hearing* of any change in that representation.
70. The Review Board shall maintain a list of registered interested parties for the hearing and make it available to all parties.

Member of the Public

71. Any person or organization who does not wish to intervene in a hearing but who wishes to make his or her views known to the Review Board may
- (a) provide his or her views, in writing, to the Review Board in advance of the hearing; or

(b) make an oral presentation during that portion of the hearing that has been set aside by the Review Board to hear the views of the public.

Conduct of a Hearing

72. The Chairperson of the Review Board or designate shall preside at all hearings.
73. Hearings will be conducted in an informal, but professional manner.
74. Hearings may be conducted with one or several of the parties participating in person, by way of video-conference or by telephone conference call.
75. Parties, members of the public and specialist advisors presenting information in hearings will be subject to questioning by the parties to the proceeding as the Review Board may allow.
76. Any party may apply for an adjournment of a hearing. Such an application shall be made by way of Request for ruling and if made in advance of the hearing, it shall be filed and served in accordance with these Rules.
77. The Review Board reserves the right to adjourn, cancel or reschedule a hearing at any time.

Pre-hearing Conferences

78. The Review Board may consistent with these rules, call a pre-hearing conference among the parties to :
 - a. finalize the issues to be discussed at the hearing;
 - b. seek clarification or amplification of the issues in a hearing;
 - c. set a time table for the exchange of information and for preparations for the hearing;
 - d. adopt procedures to be used at the hearing; and
 - e. consider any matter that may aid in the simplification and disposition of the hearing.

Community Meetings

79. The Review Board may hold non-technical meetings to hear the views of any community.

80. The Chairperson of the Review Board or designate shall preside at those community meetings. All comments and questions shall be directed through the Chairperson.
81. Community meetings will be conducted in an informal, but professional manner.
82. Any interested person or organization from the community who wishes to make a presentation shall register with the Executive Director or designate the day of the hearing. Oral presentations and written submissions will be accepted.
83. Members of the public or organizations may be questioned by the Review Board.