



Mackenzie Valley
Environmental Impact
Review Board

MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD

In the Matter of: **An amendment to Water Licence N1L3-0053 by the Mackenzie Valley Land and Water Board for the operation of a biotreatment pad for hydrocarbon contaminated soil at the Hay River solid waste disposal facility.**

And in the Matter of: **A consideration of conducting an Environmental Assessment pursuant to section 126(3) of the *Mackenzie Valley Resource Management Act*.**

On November 18, 2004 the Mackenzie Valley Environmental Impact Review Board (MVEIRB or Review Board) decided against conducting an Environmental Assessment of the Hay River biotreatment pad.

Background

Water Licence N1L3-0053 originally became effective May 31, 2002 and expires May 30, 2010. On April 16, 2004 the Town of Hay River applied to the Mackenzie Valley Land and Water Board (MVLWB) for an amendment to allow the construction and operation of a biotreatment pad for hydrocarbon contaminated soil. The pad and its operation are described in the application to the MVLWB, which is available from the MVLWB's public registry. At the time of the application the pad had already been constructed due to the Town's interpretation of its licence as allowing this facility. When informed by the MVLWB that an amendment would be required the Town ceased operation of the pad.

During the Preliminary Screening process pursuant to section 125(2) of the Mackenzie Valley Resource Management Act (MVRMA) the Katlodeeche First Nation (KFN), the West Point First Nation, and the Hay River Metis Government Council raised concerns over the development and requested an Environmental Assessment. The MVLWB held a public hearing on the matter in Hay River on August 30 and 31, 2004. The MVLWB determined in its Preliminary Screening Report that the biotreatment pad is not likely to have a significant adverse impact or be cause of public concern. Subsequently the MVLWB amended type A Water Licence N1L3-0053 accordingly and submitted it to the Minister of Indian and Northern Affairs Canada (INAC) for signature.

On October 8, 2004 the KFN submitted a letter to the MVEIRB referring the application to Environmental Assessment pursuant to section 126(2)(c) of the MVRMA. On October

28, 2004 the MVEIRB requested submissions from the parties to the Preliminary Screening on the following questions:

- Does the MVEIRB have the authority to conduct an environmental assessment on its own motion (MVRMA s.126(3)), given that the MVLWB has already submitted the Water Licence to the Minister for signature?
- Did the Town of Hay River, its contractor HAZCO, or other agencies adequately address the technical issues in their submissions to the preliminary screening proceedings?
- Is an environmental assessment necessary or warranted? If so, the Review Board requests a detailed description of your concerns and a list of the issues an environmental assessment would need to examine.

The MVEIRB received responses from the KFN, the Deh Cho First Nations, the responsible INAC inspector, the Town of Hay River, and the Government of the NWT.

Analysis

Submissions to Review Board: The Review Board notes that the question of whether or not it has the authority to conduct an environmental assessment on its own motion (MVRMA s.126(3)), given that the MVLWB has already submitted the Water Licence to the Minister for signature remains unanswered. Only the Deh Cho First Nations offered an opinion which was that the MVRMA does not put any time restrictions on referrals or assessments on the MVEIRB's own motion.

Submissions by first nations stated that the issues raised during the Preliminary Screening process have not all been addressed and that an Environmental Assessment is therefore warranted. The Town as well as government respondents, on the other hand, stated that all issues had been addressed satisfactorily and that an Environmental Assessment is not warranted.

The current situation: Hydrocarbon contamination from spills exists and must be addressed. The Review Board notes that there are currently no adequate facilities to treat hydrocarbon contaminated soil in the Hay River region. The Board agrees with the Town of Hay River that a specifically designed, properly engineered, well managed, and monitored biotreatment pad is preferable to the current practice of land farming on private properties throughout town or disposal at the Enterprise landfill, without regulatory control.

KFN raised concern that application for licence amendment was made only after the facility had been constructed. This is a unfortunate consequence of the Town's interpretation of its licence. The MVLWB is the appropriate regulatory authority and did issue an amendment to the licence following a public hearing. An environmental assessment could do nothing to address this issue.

KFN raised concern over management of the site, citing problems with management of the existing landfill. The public record shows that management of the biotreatment pad is separate from management of municipal waste disposal, and is carried out by a qualified contractor. The Water Licence (part B, item 10) requires an individual treatment plan for each lot of soil accepted at the biotreatment pad, including

- location of soil within pad,

- classification of soil,
- source, volume and characteristics of soil,
- frequency and mode of tillage,
- frequency and extent of any additives, and
- frequency of testing to determine progress of treatment.

The Water Licence (part B, item 11) requires retention of all treatment plans for a minimum of five years. Consequently, adherence to the water licence requirements can be verified by an inspector. The Review Board finds this to be an adequate safeguard for proper management of the site.

KFN raised concern over cross contamination through vehicles being used in the biotreatment pad and elsewhere in the waste disposal site. The Board is satisfied that this concern is addressed by the requirements the Water Licence set out for abandonment and restoration (part F). The Water Licence further requires that soil from the biotreatment pad used to cap landfill cells has to conform to Canada Wide Standards for Petroleum Hydrocarbons in Soil set by the Canadian Council of Ministers of the Environment.

KFN is concerned that the operator of the biotreatment pad has not committed to a particular treatment for leachate but listed four possible treatments. The Water Licence requires the town to adhere to its Operations and Management Plan, as approved by the MVLWB, or to use a method as directed by an inspector. That the treatment of leachate should reflect the actual type and level of contamination seems to be a good argument. The Board is satisfied that the provisions of the water licence, in particular the inspector's power to order a specific treatment, are adequate to protect the environment.

KFN raised concerns over the lifespan of the site and the possibility of it becoming a regional dumping ground. The Review Board finds that hydrocarbon contaminated soil originating from throughout the Hay River region is being treated in Hay River today and that the existence of the biotreatment pad has only a moderate potential to "attract" soil from other regions. The Board is satisfied that the operator's commitments, combined with the water licence requirements, are an adequate safeguard against this pad becoming a dumping ground for a wide range of contaminated soils, e.g. from oil and gas² exploration. Relevant water licence requirements include an individual treatment plan for each lot of soil and maximum residual contamination levels for treated soil.

KFN is concerned over a lack of a spill contingency plan. The Review Board is satisfied that the water licence requirement of a MVLWB approved spill contingency plan (part I) addresses this issue.

KFN raised concern over the site being close to the Hay River and upstream of the community and of the Town of Hay River. On the matter of the location of the waste disposal facility in general, the Board agrees with the KFN that the site may not be perfectly located by today's standards. The Board notes that the Town of Hay River has made efforts to re-locate the disposal site but has been unsuccessful in obtaining an appropriate property.

On the question of the location of the biotreatment pad posing a hazard to the community, the record shows that the developer has made reasonable efforts to place the pad at a location furthest from the river within the overall facility. The record further shows that the construction of the pad together with the water licence requirements for ground water monitoring, including three new monitoring wells around the pad, safeguard against

contaminating the Hay River. The Board notes that municipal waste is being deposited closer to the river with fewer safeguards.

KFN raised concerns over inadequate monitoring. The Water Licence requires an additional three ground water monitoring wells, prescribes sampling procedures in accordance with Environment Canada and Alberta Environment standards, requires analysis by an accredited laboratory, and mandates regular reporting. This monitoring regime is comparable to that for similar facilities elsewhere and should be considered adequate for this specific facility.

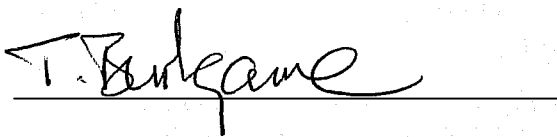
KFN stated that consultation has been inadequate. The Board agrees that the developer's efforts in consulting the KFN, other first nation, metis, and the public prior to constructing the pad could have been more extensive. On the other hand, the public record shows that the developer had reasonable grounds to assume that no amendment to the Water Licence was required. The MVLWB held a public hearing on the matter, providing an avenue for public input.

KFN raised concerns over cumulative effects. The MVLWB's preliminary screening concluded that the biotreatment pad will have no significant adverse environmental effects. The public record does not indicate the contrary and does not contain evidence of any specific potential cumulative effect.

Conclusions

Considering all of the items discussed above, and on the basis of the public record that exists at this time, the Review Board concludes that an environmental assessment of the Hay River biotreatment pad is not warranted. Consequently the Review Board decided not to conduct an environmental assessment on its own motion.

For the Mackenzie Valley Environmental Impact Review Board:



Todd Burlingame, Chairman

DATED: the 06 of December, 2004.