

**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 referral of Water Licence N1L3-0053 for Environmental Assessment by the Katlodeeche First Nation pursuant to ss.126(2)(c) of the MVRMA

## **REASONS FOR DECISION**

### **BACKGROUND:**

Water Licence N1L3-0053 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) 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 Mackenzie valley Environmental Impact Review Board (MVEIRB) referring the application to Environmental Assessment pursuant to section 126(2)(c) of the MVRMA.

**ANALYSIS:**

In order for the KFN to have the capacity to make a referral under paragraph 126(2)(c) of the MVRMA, they must qualify as a local government under the definition set out in section 2 of the MVRMA. That definition reads as follows:

"local government" means any local government established under the laws of the Northwest Territories, including a city, town, village, hamlet, charter community or settlement, whether incorporated or not, and includes the territorial government acting in the place of a local government pursuant to those laws.

There are four statutes in the Northwest Territories that establish local governments, the *Cities, Town and Villages Act*, the *Charter Communities Act*, the *Hamlets Act*, and the *Settlements Act*. The Katlodeeche First Nation is not established under any of these four Acts but under the *Indian Act*.

Moreover, the *Deh Cho First Nations Interim Measures Agreement* defines a local government as follows:

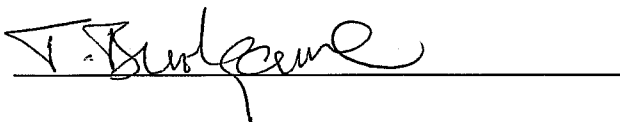
"Local Government" means any local government established under the *Cities Towns and Villages Act, Hamlets Act, Charter Communities Act or Settlements Act* of the Northwest Territories including a city, town, village, hamlet, charter community or settlement whether incorporated or not, and the GNWT acting in place of a local government".

This definition is consistent with the MVRMA definition and confirms that the "laws of the Northwest Territories" referred to are the laws of the Government of the Northwest Territories, not simply laws valid in the Northwest Territories.

**DECISION:**

The Review Board concluded that the KFN is not a local government as defined by the MVRMA and does not have the authority to refer a development to Environmental Assessment according to subsection 126(2) of the MVRMA.

**For the Mackenzie Valley Environmental Impact Review Board:**



**Todd Burlingame, Chairman**

**DATED: the 08 of December, 2004.**