



***INDEPENDENT ENVIRONMENTAL MONITORING AGENCY***

P.O. Box 1192, Yellowknife, NT X1A 2N8 ■ Phone (867) 669-9141 ■ Fax (867) 669-9145  
Website: [www.monitoringagency.net](http://www.monitoringagency.net) ■ Email: [monitor1@yk.com](mailto:monitor1@yk.com)

April 27, 2012

Helga Harlander  
Chair, Working Group, Public Engagement and Board Consultation  
Land and Water Boards of the Mackenzie Valley  
c/o Gwichin Land and Water Board  
P.O. Box 2018  
Inuvik NT X0E 0T0

Dear Ms. Harlander

**Re: Draft Engagement Policy and Guidelines**

Please consider this letter as a submission from the Independent Environmental Monitoring Agency on the Draft Engagement Policy and Guidelines recently released by the Land and Water Boards of the Mackenzie Valley. The Agency has been involved in engagement and consultation activities undertaken as part of the BHP Billiton Ekati diamond mine. Our comments are based on that experience.

Some general comments on the Policy and Guidelines appear below, followed by some specific comments. We have also attached a tracked changes version of the Guidelines with some comments and suggestions.

**General Comments on the Draft Policy and Guidelines**

The draft Guidelines are very well written and include all the procedural factors necessary for effective community engagement. Some explanation of why certain procedures and practices are suggested or required would be helpful. This is especially important for southern Canadian and foreign developers that might not be familiar with the northern cultural landscape within which they plan to operate. The document should enhance industry's understanding that in the NWT community engagement is a core requirement, just as important to regulators as health and safety or environmental affairs. The draft Guidelines should assist in clarifying the engagement responsibilities and practices for applicants and developers.

It is not clear how potential impacts and public concerns developed through the engagement process relate to the environmental assessment process, and how this will be considered by the Land and Water Boards or the Mackenzie Valley Environmental Impact Review Board. Definitions and approaches used by the Review Board should be cross-referenced and used wherever possible to avoid confusion and duplication.

Applicants and developers should not expect that definitive opinions will be elicited from a Dene, Metis or Inuit community or group the first time the group learns of the contents of an application for a land use permit, water license renewal issues or management plans. Guidance to developers should state that "an appropriate level of engagement" should include follow-up meetings with consulted communities so that they can give more thoroughly considered opinions, approval or disapproval for a proposal laid out in previous information meetings. In other words, section 8, paragraph 1 of the Policy document should make it clear that the developer should ensure Aboriginal communities "have had the opportunity to comment **directly to the developer** on a project or aspects of a project to which a submission is related", not rely solely on community submissions to the Board. This may mean follow-up meetings in the community should be conducted in addition to workshops in Yellowknife where only a small community contingent can participate. This may all be implicit in section 8 and is stated in the Guidelines, but should be spelled out in the Policy.

Verbal commitments are often just as important to Aboriginal elders as written ones. Developers often have different personnel handling the project proposal and environmental assessment process and the later licensing process, particularly for larger projects or development that takes place over several years. Conflicts can arise when there is a different understanding or interpretation of what was said during early consultation meetings between Aboriginal peoples who participated in those early meetings or workshops and company staff who may not have been present. If continuity of company staff through the different phases of project approval, licensing, development and closure is not possible, there should be accurate record-keeping of minutes of community consultation meetings and these should form part of the "need-to-know" portfolio transferred to the operations, environmental management, and/or regulatory affairs staff. This is why Section 3.3 of the Guidelines is so important. This rationale should be incorporated by the MVEIRB as well, in its procedural guidance to developers. The engagement record would be a document critical to both internal communication needs of the developer through the life of project, and to the Board's assurance that environmental assessment phase commitments to affected communities are not lost. The objective here is to ensure that verbal commitments in the environmental assessment phase can be maintained through the operational and reclamation phases regardless of changes in corporate memory.

The Boards may wish to offer advice on the means to maximizing the full engagement of communities. There may be a significant number of people who are uncomfortable giving their input at public meetings in their community. To capture their input it may be necessary for developer representatives to overnight in the community, if accommodations are available, so that people who are more comfortable speaking one-on-one or in smaller informal groups are able to approach the developer with their ideas.

The Agency has raised the issue of capacity for communities and participant funding to meaningfully participate in the review of management plans and applications, in the context of the Ekati Mine. Although it may not be the responsibility of the Land and Water Boards to provide participant funding, the lack of such resources affects the regulatory process and outcomes, and remains to be addressed.

## **Specific Comments on the Guidelines (see text for tracked changes)**

### Definitions

- Aboriginal organisation – First Nations under the MVRMA include Metis, so it is not clear why Metis are mentioned separately
- affected community – may be defined geographically and culturally
- affected party – this should include groups identified by the proponents as well as groups that consider themselves to be potentially affected
- project – “undertaking” might be a more appropriate definition

### Identifying affected parties

- parties should include geographic communities (points) and cultural (Aboriginal) communities (may include large, overlapping territories)
- should include less visible and minority communities

### Benefits of engagement

- community members may provide feedback during engagement, but it should be clear that community positions can only be provided by spokespersons selected by the community
- engagement can also contribute to negotiated agreements that accommodate concerns and interests thus saving time and money on environmental assessments

### Community public meetings

- community protocols and capacity should be considered in setting up meetings
- clarify that proponents should plan and schedule community meetings in partnership with community representative

### Engagement record

- privacy issue for some attendees should be addressed

### Engagement best practices

- staff and elder participation should be included in planning events and meetings

### Engagement expectations table

- workshops might also be needed due to complexity of issues and variety of stakeholders for new land use permits, amendments to water licences, and amendments of SNP's. Boards may want to give themselves some discretion to direct engagements on these matters, either of their own accord or upon request.

### Engagement plan development

- should recognise capacity issues that may exist in some communities that may require financial assistance depending on the complexity and scale of projects

### Engagement plan example

- contact person for area of responsibility should be noted for all parties
- it is not clear whether “Project Stage” would better describe the first column

Feel free to contact our Executive Director, Kevin O'Reilly, should you have any questions on our comments and suggestions.

Sincerely

A handwritten signature in black ink, appearing to read "W. Ross".

Bill Ross  
Chairperson

cc. Society Members  
Ryan Fequet, WLWB  
Lisa Lowman, Environment Canada  
Bruce Hanna, Fisheries and Oceans