



Alternatives North

March 26, 2008

Neil McCrank
Special Representative of the Minister of Indian Affairs and Northern Development
Northern Regulatory Improvement Initiative
Email: neil.mccrank@shaw.ca

Re: Submission from Alternatives North

Dear Mr. McCrank

Although we recognize that your review is drawing to a close, we thought it important to place our thoughts on the public record concerning some of the key issues that you are examining.

Background on Alternatives North

Alternatives North is a Northwest Territories (NWT) based coalition of groups and individuals committed to building, strengthening, and defending social and economic justice. We began in 1992 when NWT labour, church, and women's groups came together to work on local, national, and international issues. We now have links with environmental and anti-poverty groups, and community-minded small businesses. We are a volunteer, non-profit NWT registered society.

We are long-term residents of the NWT and bring a variety of expertise from working within the territorial, Aboriginal and federal governments, and the volunteer sector. We have been recognized for our solid participation as an intervenor before the Joint Review Panel and National Energy Board on the Mackenzie Gas Project. The present submission is based on that experience and years of involvement in other northern regulatory proceedings.

Concerns with the McCrank Review

Firstly, we are quite concerned regarding the lack of transparency for your review. We still cannot locate any written terms of reference or timelines. We had thought that such information would be made available in a timely and transparent fashion, through the Department of Indian Affairs and Northern Development. The most substantive publicly available information on your review is to be found on the website of the Mackenzie Valley Environmental Impact Review Board, for which we commend that body.

We are of the opinion that your review appears to be motivated largely in reaction to unreasonable, yet persistently held views by some private sector developers that have yet to realize that the governance and regulatory system has evolved in the NWT as a result of constitutionally entrenched land claims agreements. Communities, Aboriginal governments, and the public hold substantive powers, largely in the absence of devolution and revenue-sharing arrangements with the territorial government, to ensure that local people have a stronger say in the scale and pace of resource development and overall economic development. While we acknowledge that there may be some areas of the environmental management system that require real improvement as outlined below, your assignment appears to be one of attempting to tip this balance in favour of private interests.

We think that the efforts of your review would have been much more wisely invested in responding to and acting upon the findings of the 2005 Northwest Territories Environmental Audit. The Audit is the legitimate and legally-required process for improving the integrated resource management system that was supposed to be established pursuant to the *Mackenzie Valley Resource Management Act (MVRMA)*. The federal government has yet to officially respond to the Audit, yet is forging ahead with other initiatives to avoid dealing with the real problems.

Key Issues and Recommendations

We can sum up our recommendation to you very easily. **In the context of improving the NWT environmental management system, please make the federal government focus on responding to and implementing the findings of the Environmental Audit.**

We also refer you to the attached written submission that Alternatives North presented to the Joint Review Panel in May 2007. This contains a review of the Environmental Audit findings in the context of oil and gas development in the NWT, and identifies critical deficiencies in the closure and reclamation regime, such that it is, for this same sector.

Below we have noted the ten questions that you recently used to focus discussions at a in Yellowknife and provide you with our response where appropriate:

1. Is the current regulatory scheme working well enough to enable responsible resource development, or do we need a fundamental re-ordering of the scheme?

We would not define the current state of affairs in the NWT as resembling “responsible resource development” given the critical failure of the federal government to implement key functions in the *MVRMA* such as land use planning and cumulative impact monitoring. We do not even have the ability to make a reasonable assessment of whether the current level of resource development activity is ecologically sustainable, let alone within limits of acceptable change for communities. Decision-makers and governance systems have yet to

recognize ecological and social limits and develop thresholds to ensure some margin of safety in the interest of sustainability.

Furthermore, fundamental re-ordering of the scheme, even if desirable, presents its own challenges as many of the provisions of the *MVRMA* are part of constitutionally entrenched Aboriginal rights.

2. If there is no need for fundamental change, what changes would provide for greater accountability and predictable and timely decision-making by all agencies involved with northern regulatory approvals?

One of the greatest needs for improving the comprehensive and integrated environmental management system that was envisioned in the *MVRMA* is to fully implement the provisions of the legislation through adequate and stable funding of the co-management boards and for a participant funding program, not just for environmental assessment, but inclusive of other phases too. We support the submissions you have received from the northern boards as they are in a much better position to articulate their needs directly to you.

We cannot understand the inertia of the federal government in establishing a proper and adequate participant funding program for all phases of the environmental management system. We are quite frankly astounded that there has not yet been a constitutional challenge to the federal government's failure to institute participant funding for environmental assessments under the *MVRMA* even at a bare minimum. Participant funding is required for environmental assessment and for all of the management functions specified in the *MVRMA*—land use planning, environmental assessment, land and water regulation, cumulative impact monitoring and environmental audit. While we recognize that the needs may vary over time or by function, there is little to be gained by short-changing public and community involvement at various stages of the environmental management system. Northerners have for too long been excluded from decision-making about our resources and the pace of development. With meaningful participation, there will be a more effective, efficient and responsive decision-making processes.

The federal government's chronic underfunding of *MVRMA* implementation and public participation has been compounded by a failure to promote or educate the public and developers in particular. If you want a system to fail, what better way to create frustration and calls for so-called reform that to starve the system? We recognize that there is a special government responsibility to build long-term capacity through a functional education and training system. The systematic underfunding of *MVRMA* implementation has only compounded the problem of building short and long-term capacity. Northerners are at great risk of losing the integrated environmental management system that was so hard fought for at the negotiating table due to this chronic underfunding. The federal government must live up to its legal obligations negotiated in the land claims agreements and provide adequate and stable funding for the operation of the NWT environmental management system.

3. Is there a need for more coordination within and between federal and territorial government departments? Would a ‘major projects management office’ or some similar type of agency help?

We do not see a meaningful role for a major projects management office (MPMO) as this will simply place more pressure for quicker and less effective decisions on an already stressed system. Instead, why not devote the resources towards building longer term capacity and meaningful public participation?

Collaboration between and within government departments on environmental assessment processes already exists in the NWT. The amount required to invest and maintain a MPMO’s would be seriously outweighed by any gains. The bulk of the problems with the regulatory process do not stem from government coordination constraints.

There has been a marked steady and massive erosion of meaningful government participation in environmental assessment and overall involvement in environmental management. True and representative government responses have been replaced by a laissez-faire, market-driven approach that has proven to do little to serve the public interest or sustainability. Further coordination of government departments is meaningless when participation is generally hindered by political considerations, rather than driven by the substantive professional expertise of many government employees.

4. Are there major or minor policy gaps that should or must be addressed by government (e.g., water quality standards, air quality standards)?

Major policy gaps include:

- the lack of enforceable air and water quality standards in the NWT;
- the need to regulate fuel storage in vessels traveling on or stored in water;
- the lack of clear legislative basis or consistency for wildlife monitoring and management plans in the context of individual projects; and
- the failure to properly implement the ‘polluter pays’ principle in legislative and regulatory closure and reclamation requirements that promote sustainability in its broadest sense (please see the closure and reclamation section of the attached submission to the Joint Review Panel).

5. Are there specific changes in regulations or legislation that need to be made - for example, to eliminate qualified language, define terms such as significant adverse effects, and provide more clarity for regulators and proponents?

There is no coordinated or systematic approach to liability, closure and reclamation, or financial security for hydrocarbon or mineral development in the NWT. There is very little regulatory guidance for closure and reclamation of oil and gas facilities in the NWT or for mining, and detailed expectations or closure standards do not exist. Existing provisions for closure and reclamation do not require that ecological diversity and productivity be restored or that agreed upon end uses do not compromise future generations. Further, there are no

clear, mandatory requirements for closure plans before operations begin, or financial security to cover approved closure plans to ensure that the public purse is adequately protected.

Rather than repeat suggestions here, we direct you to the attached submission where detailed recommendations are offered to begin to remedy this sorry state of affairs.

6. Are there specific policy issues that need to be addressed (e.g., defining adequate s 35 Consultation)?

See our answer to question 5 above and the attached submission to the Joint Review Panel.

7. Would a regional environmental assessment approach be more effective or appropriate than the current project-by-project approach? For example, are there tools available to reduce the need to repeat the same comprehensive EA approach for each project - such as regional databases or “strategic assessments”?

Rather than focus on a regional environmental assessment approach, it would be more appropriate to complete and implement regional land use plans that have legal force under the *MVRMA*. For example, in the Slave Geological Province, there have been several project specific environmental assessments for five diamond mines, all in the absence of any explicit limits to human activities or thresholds, while the Bathurst caribou herd has declined dramatically. A land use planning process is the place to make explicit any trade-offs and to begin to set limits of acceptable change, rather than individual project assessments. Approved and implemented land use plans would be much more efficient and effective than creating, funding and supporting a new regional environmental assessment process.

8. Are there implementation issues arising from Land Claim Settlements that need to be addressed? (e.g. capacity, funding, and appointments of Board members). Can some of these be addressed now, rather than waiting for devolution or for all land claims to be settled?

As stated above, we support the submissions you have received directly from the northern boards as they represent themselves and through the Northern Board Forum. Please also note our comments in response to your question 2 in relation to capacity and participant funding.

9. Question to the northern Boards – Have your mandates, roles and responsibilities been properly defined for you by the Minister? Do you have the necessary tools (e.g. mandate document, orientation package, and training)?

We have some difficulty with this question as the ‘Minister’ does not define the roles and responsibilities for the Boards. This was done through Parliament in a publicly debated bill. The Minister, along with Aboriginal government leaders, may provide their views to the Boards, but should not be directing independent bodies.

10. Should INAC be involved in parts of the regulatory decision-making process (outside of its own mandated areas) and if so, how should it be involved?

It is not clear what role may be contemplated for DIAND, but it is clear that there are several conflicting responsibilities, including fiduciary obligations to Aboriginal peoples, environmental stewardship as a manager of public lands and waters, and promotion of economic development as a quasi-provincial government. As long-term northerners, it is certainly our perspective that the latter role, promoter of development, usually triumphs. This is not a healthy state of affairs and there is some merit in splitting up these responsibilities so trade-offs and compromises are made more accountable in the public eye. This could be accomplished through devolution or transfer of some responsibilities to other federal departments. This requires careful thought and planning and appears to us, to be likely beyond your mandate.

In conclusion, Alternative North would recommend that you make clear recommendations in your final report. This includes identifying the responsible party, the resources required and a recommended timeline. Should you have any questions regarding this submission and attached paper, please contact us by e-mail at info@alternativenorth.ca.

Sincerely,



Ben McDonald
On Behalf of Alternatives North

Attach.

cc. Dennis Bevington, MP Western Arctic
NWT Members of the Legislative Assembly
Northern Board Forum