



October 9, 1997

The Honourable Jane Stewart
Minister
Indian Affairs and Northern Development
House of Commons
583 Confederation Building
Ottawa ON K1A 0A6

Dear Minister Stewart:

RE: Bill C-6, Proposed Mackenzie Valley Resource Management Act

I am writing to express the profound concern of the NWT Chamber of Mines over Bill C-6 and the implications of this legislation for the mineral industry in the Northwest Territories.

The NWT Chamber of Mines represents over 600 companies and individuals involved in mineral exploration, mine development and mine operation in the NWT. This membership is very concerned that the proposed system of land and water management and environmental review is so poorly defined and under-resourced that it will quickly prove unworkable, with severe consequences for our industry.

We are also concerned that such sweeping changes have been designed with no regard for the interests of our industry. Moreover, we feel that there has been no genuine opportunity for the industry to consult on the legislation, because of the prolonged, iterative process used to develop it, and the complex legal language of the lengthy documents provided.

Recognition of the Importance of Settlement of Land Claims

The Chamber recognizes the importance of the goals of this legislation, in particular the need to implement commitments made by Canada to Aboriginal peoples under land claim settlements. We are also on record in full support of prompt settlement and implementation of Aboriginal land claims, to ensure the full participation of Aboriginal people in developments on their lands. The concerns stated here should not be construed as in any way opposing the settlement of land claims. However, we also believe that the management of land and water and the protection of the environment in the Mackenzie Valley are issues of vital importance to all residents of the region and to Canadians generally.

The Mineral Industry Position on Resource Management Regulation

Over the past decade, the Canadian and NWT minerals industry has participated actively in consultation regarding the Whitehorse Mining Initiative, the Canadian Environmental Assessment Act and regulatory reform. Our position has been clear. The mineral industry fully recognizes its responsibility to conduct its affairs in an environmentally sound manner and realizes that there must be a sound regulatory framework in place to ensure that companies live up to their responsibilities.

Equally, the mineral industry has stressed that matters of access to land and the terms and conditions of mineral tenure are vital to our business. In an activity subject to great technical and geological uncertainty, we need clarity of rules, predictability of decisions, and certainty regarding terms and conditions for our activities. This need is all the greater given the massive commitments of capital required for exploration and development, and the costs and time involved in obtaining regulatory approval.

Standards Required of Resource Management Regulation

In order to compete successfully and to fulfil our economic, environmental and social responsibilities, we require of government that regulation meet certain standards:

- . Resource regulation must be fair; the rules must be clear, known in advance and be applied consistently and equally to all;
- . Standards should be high, but achievable and reasonable, and consistently applied and enforced;
- . The system should produce timely decisions, and should minimize arbitrariness;
- . There should be no duplication of process;
- . To the extent possible, there should be a "single window" for environmental regulation;
- . The system should make it easier to predict the costs of environmental compliance for a development, and the likelihood of approval.

Bill C-6 Further Erodes these Standards

Government has consistently expressed sympathy with the industry viewpoint, and, with respect Madame Minister, has just as consistently ignored it when developing processes for the NWT. The existing system is cumbersome and complex, requires multiple approvals and authorizations from several levels of government, produces highly unpredictable outcomes, and results in a wide disparity in the standards and costs of compliance.

Unfortunately, the new system of resource management proposed in Bill C-6 replicates the difficulties with the existing system, and compounds them with yet another layer of interjurisdictional confusion, even less clarity in the rules and standards and an increase in the costs of compliance.

The multiplicity of regulatory domains within the Mackenzie Valley together with weak requirements for regulatory co-ordination with agencies outside the Valley will entail an even more complex process for an applicant, and will substantially increase the costs of administration to the taxpayer compared to the current system.

Moreover, this direction runs contrary to recent government initiatives, at least in other Canadian jurisdictions, toward streamlining and cost reduction. We are disappointed that the policy thrusts of "Streamlining Environmental Regulation for Mining, March 1997" and the "Minerals and Metals Policy of the Government of Canada, 1996" will not apply in this most prospective region of the country.

Yellowknife Information Session on Bill C-6: September 25, 1997

Our membership was recently invited to an information session held by your officials in Yellowknife the week that the Bill was introduced to Parliament. Much as we appreciated the efforts of your Yellowknife officials to organize the event and to encourage our participation, the briefing session itself did little to allay our concerns. In fact, the session raised many more questions about the implications of the Bill not only for our industry, but for resource users generally and the public interest.

Concerns Raised: New Obstacles for Resource Developers

Among the new obstacles for resource developers are:

- . The potential for interference with staking of mineral claims,
- . The change in the role of leases and land use permits,

- . New powers to Boards to suspend permits and leases,
- . Poorly defined terms for new rights to compensation, and
- . A confused enforcement policy.

Concern: Lack of Clarity Will Compel Litigation

Attendees raised many questions on these and other issues. Far too many of the questions were answered with uncertainty, often with the worrying response that such matters would have to be settled in court. If legal recourse is recognized now as the only way to settle matters that we know arise regularly in the North, then surely this is the time to amend the legislation, not later, after much private and public money and time have been squandered in unproductive litigation. While quick passage of poor legislation may be convenient in the short term by turning over awkward political issues to the lawyers and courts, such inconvenience is far outweighed by the costs in delays, poor decisions and waste - with no gain whatsoever in the quality of environmental decision making.

Concern: Vulnerability to Deliberate Delay Tactics

One concern raised was the fear that deficiencies in the Act would encourage parties to use delay as a tactic to impede environmental review processes in order to wrest concessions that are largely unrelated to the protection of the environment or to the specifics of the proposal. The Chamber of Mines feels strongly that the regulatory framework should be able to withstand such tactics, so that decisions on a proposal are based on the merits of the

application. Resource developers should not be put in a position where approvals are withheld or delayed at length, for example, while a group attempts to obtain better terms from the federal government in land claims negotiations, or until the company commits to specific contractual relationships for services.

Such concerns were dismissed as improbable by officials at the information sessions. With respect, we refer you to this region's recent experience with federal environmental reviews; to the "growing pains" encountered in the regulatory process under institutions established in Nunavut; and to the current difficulties at Fort Providence. It is our extensive experience with operating in this region that leads us to put such a high priority on clarity, fairness and consistency in the rules and their application.

Concern: Public Representation on Public Bodies

Another concern raised was the lack of clarity on the process for selecting members to serve on the various panels and boards. The proposed Act does not spell out what criteria will be used in determining who is a proper representative of the public interest. A process that is not open and transparent can lead to the perception of mistrust and bias.

The Need for Better Information

This letter will not attempt a clause-by-clause review of the Bill. We understand that your Department is developing further information packages and flow charts on the new process. We look forward to receiving them in advance of the Standing Committee hearing on the legislation, so that we have the opportunity to participate fully and with sound information on a matter that has such serious implications for our industry.

Call for Amendments to Bill C-6

While we look forward to receiving this information, our difficulties with this Bill are not due simply to incomplete information. Our analysis indicates substantial problems on two broad counts.

- . First, the lack of clarity in the law and in the rules is likely to produce very uneven regulation across the region and from one applicant to the next, and will result in a highly litigious process.
- . Secondly, the new system is seriously under-resourced, especially in regard to technical capacity, and will be at a disadvantage in dealing with the large work-load entailed by transitional arrangements and changes to leasing and permitting.

Unless Bill C-6 is substantially amended to address problems of clarity and workability, the Chamber believes that the confusion, delays and cost of the new system will grind mineral exploration to a painful halt, at an inestimable loss to all the people of the region and to the Canadian economy as a whole. We draw your attention to the recent decision by Inco to defer development at Voisey's Bay because of onerous and poorly defined regulatory demands, in a system that is ostensibly far better defined and more unified than that proposed for the Mackenzie Valley.

We would like to work with your Department to ensure that the new

system demonstrates real progress toward fair, effective and workable resource management and environmentally sustainable development. To this end, we welcome amendments that seek to address the concerns noted:

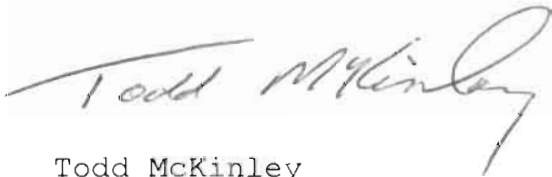
- . Attention to the clarity and soundness of the rules, and assurance of consistency of rules and standards across all regions of the Mackenzie Valley and from project to project;
- . Reconsideration of arrangements for the transition from the existing system to the MVRMA, including limitation of the regime to settled claim areas;
- . More practical "grandfathering" provisions for existing leases and permits;
- . Provisions to ensure the technical capacity of the new system to deal with complex issues at every stage of screening and review.

Request for Standing Committee Hearings in Yellowknife

Given the large number of our members who would want to speak to this Bill but would be unable to afford the prohibitive costs of travel to Ottawa, the Chamber feels that the Standing Committee reviewing this legislation should hold its hearings in Yellowknife. We would appreciate your support in urging the Standing Committee to make this accommodation.

Thank you.

Yours truly,



Todd McKinley
President

NWT Chamber of Mines

cc. Hon. Ralph Goodale, Minister of Natural Resources Canada
Hon. Stephen Kakfwi, Minister of Resources, Wildlife and
Economic Development, Government of the Northwest Territories
Hon. Don Morin, Premier, Northwest Territories
Standing Committee on Aboriginal Affairs and Northern
Development, Attention: Ms. Christine Fisher
Hon. Ethel Blondin-Andrews, MP Western Arctic
Mining Association of Canada
Prospectors and Developers Association of Canada
Canadian Association of Petroleum Producers