

NORTHWATCH

January 23, 2004

Mr. Brian Calvert, Director
Natural Resources Canada
Sustainable Development Policy Integration Division
580 Booth Street, 10th Floor, Room 10A1
Ottawa ON K1A 0E4

Comments sent Via Email

Dear Mr. Calvert:

Re. **Draft Guidelines for the Conduct of a Comprehensive Study and the Preparation of a Draft Comprehensive Study Report for the Victor Diamond Project, De Beers Canada Exploration Inc., FEAI Registry # 40568**

We have recently received and reviewed the Draft Guidelines for the Conduct of a Comprehensive Study and the Preparation of a Draft Comprehensive Study Report for the Victor Diamond Project and some other information items related to this and other diamond projects in northern locales, and are writing to provide our comments on the draft guidelines.

Northwatch is the regional coalition of environmental and citizen organizations and individual members in northeastern Ontario. Founded in January of 1988, Northwatch has as a priority issues that are of a regional nature : energy use, generation and conservation; forest conservation and wild areas protection; waste management and water quality issues; mining; and militarization. In addition to acting on these issues as a representative body, Northwatch provides support to local citizens groups addressing these and other environmental concerns in their community. Northwatch is currently working with members and member groups to improve forest management, promote community involvement in mine monitoring and management and in decision-making related to mineral exploration and development, and to prevent northeastern Ontario from becoming the receiving ground for foreign wastes, including Toronto's garbage, Ontario's biomedical waste, Canada's nuclear reactor fuel waste, and PCBs from around the world.

Despite our having identified our interest to both De Beers Canada Exploration Inc and the Canadian Environmental Assessment Agency as early as February 2002, we were not provided with any notice that the EA had commenced nor were the Draft Guidelines circulated to us prior to our direct request of this week, upon having learned through other means that the draft guidelines for the comprehensive study had been issued and that a deadline for comment was imminent. Given these circumstances, our review has been regrettably cut short, with the net result of our comments being of a more preliminary and general nature than would have been our preference.



Environmental Assessment Expectations

Given that this is our first submission as part of this environmental assessment (EA) we would like to preface our remarks on the draft guidelines by setting out what we consider to be the key principles and features of an effective environmental assessment process.

The purposes of the Canadian Environmental Assessment Act (CEAA) are to:

- C ensure that environmental effects of proposals are carefully reviewed before any approval or grant is given
- C encourage federal departments to take actions that promote sustainable development
- C ensure that federal departments work in a coordinated and efficient manner
- C ensure that projects don't cause significant environmental effects outside the province or country of the project
- C ensure that the public has an opportunity to participate in environmental reviews

These purposes are CEAA's strengths - commitments to do sound and thorough environmental assessments, involving the public and protecting the environment.

Key principles of environmental assessment include:

- C** Public involvement should happen at the earliest stages in a project's development and review. For the public to be involved, a number of "ingredients" must be present in a review process: public notice, access to information about the project, access to any information sessions or hearing sessions, access to all of the comments and documentation generated during the review process, and access to sound technical advice.
- C Project evaluation should examine all potential adverse effects, including direct and indirect effects and physical, biological, health, social, cultural, economic, and cumulative effects. The likelihood of effects and the potential effects of malfunction or accidents should be included in the review, and related activities should be assessed under the principle of "one project, one review." The review should also address alternatives to the project, including whether the project is needed.
- C** Potential impacts have to be reviewed in broad enough scope and with enough rigour to provide confidence that the environmental effects are being appropriately and expertly considered and that the significance of the effects are fully understood.
- C Participant funding supports public involvement in environmental assessments by reimbursing expenses incurred as a result of participating in a hearing, information session, or on a decision-making table, including travel, communication expenses, purchase of information, and independent expert advice.
- C Review processes are only as good as their final result, with the most critical test being : Does the decision protect the environment? Review outcomes may be simple "yes" or "no" verdicts, but more often they will result in a qualified approval, allowing the project to proceed but only under certain conditions. And after an environmental assessment review comes to a conclusion, the government makes the final decision on how - or whether - to implement the review's conclusions. Followup programs are a key ingredient in an effective environmental assessment program.

Public Participation Program for the Review of De Beers' Victor Project

While still early in the review process, there are a number of areas where the public participation program warrants improvement. We are optimistic that by raising these concerns now, changes can be made and improvements will be in place before irrevocable decisions are made without the benefit of public involvement in the decision-making process.

One area of concern is with communications on the part of the Canadian Environmental Assessment Agency. Identified problem areas to date include:

- tracking problems within the agency; for example, Northwatch identified our interest in this project on more than one occasion and as early as 2 years ago, but we were not included on a distribution of the draft guidelines or given notice that Natural Resources Canada had been identified as the lead department
- the CEAA web site does not include any posting or news release related to the project and its review that would serve as notice that a review of the Victor Project under CEAA has commenced
- the posting on the Federal Environmental Assessment Index, Registry # 40568, as of January 22nd, did not include any notice that draft guidelines had been prepared or that a deadline for comment was imminent registry improvements

We were very pleased with the almost immediate response we received from Natural Resources Canada in reply to our request for a copy of the draft guidelines and a copy of the document listing for the public registry. However, as noted below in our comments on Section 4.3 of the draft guidelines, we have some concerns with what appears to currently constitute the public registry. Most notably, the public registry document listing, as of January 19, 2004, included only documents generated later than July 10, 2003; however, CEAA communications have indicated that discussions between the proponent and federal departments and agencies have been underway since early 2001¹, and the FEAI posting indicates that the EA commenced on April 14th, 2003. As also discussed below, our view is that the public registry should be available on-line, with both the document listing and an electronic version of the documents posted available.

Consistent with the principles of EA outlined above, we believe that participant funding is an essential component of a fair and informed environmental assessment process. As you will be aware, participant funding is now available for comprehensive studies which are being reviewed under the newly revised Canadian Environmental Assessment Act. We see no reason, in the interests of fairness, why this recognition by the federal government of the need for participant funding should not extend to the review process for the Victor Project, given that the lead department has only been so recently identified and the review process is still in the early stages. In our view, participant funding should be provided by De Beers Canada and administered by CEAA under the participant funding program.

Finally we wish to note in these comments on the public participation aspects of this review, as we do below in our comments on Section 4.2, that the draft Guidelines indicate that a suggested table of contents is "provided in Appendix A", but that appendix was not attached or included with the copy we were provided for the purpose of review. This is a major omission, and should be remedied by circulating the draft table of contents to all interested parties and extending the comment period to allow for its appropriate review.

Comments on Draft Guidelines

As indicated above, we have had very little time to review the draft guidelines and as of commencement of comment preparation had not yet received the documents we have requested from De Beers Canada (May 2003 Draft Environmental Assessment and the August 2002 document describing the Victor Project Overland Fuel Pipeline). Our comments of today are preliminary in nature; we may seek to provide supplementary comments when and if the requested documents are provided by De Beers. These preliminary comments are in response to each section of the draft guidelines, with some additional notes with respect to subjects or areas of investigation which should be added to the guidelines. Some of our comments are with respect to the study and review process, including roles and responsibilities of the federal authorities, in addition to our comments on the substance and structure of the comprehensive study and study report.

1.0 Introduction

- inconsistencies between information provided in this section and that posted on the FEAI
- purpose should include public participation opportunities, consistent with the purpose of the Canadian Environmental Assessment Act (CEAA)

2.0 Scope

- scope should include De Beers other exploration and development activities in the area, including but not limited to the Victor Extension Project (including but not limited to the Tango, Delta, and India kimberlites)
- mitigation measures should not be limited to those that are “technically and economically feasible” mitigation measures should be identified, described and evaluated on the basis of their potential effectiveness; this examination should be comprehensive; the Act requires such an examination (ie of mitigation measures that technically and economically achievable) as a minimum; given the circumstances and locale of this project, the examination should be more comprehensive

3.0 Public Participation

- the public participation program needs to clearly identify and provide for the participation of the scientific community, academics, environmental non-governmental organizations, and the public; as per the Act’s definition of “interested party” in Section 2 of the Act, and in accordance with the Act’s emphasis on public participation, both the proponent and the Responsible Authorities should make every effort to include and engage the many different “publics” with an interest in the project
- the participation plan should include a work plan and related timeline, recognizing that this may be adjusted throughout the study and review process
- the public participation plan should identify clearly where and how the various documents are to be made available, and should state that all documents, including technical documents, will be available to interested parties upon request
- the draft guidelines indicate that De Beers will provide full document sets to a number of First Nations, but does not identify which First Nations; full document sets should be provided to all provide all regional First Nations, and to Mushkegowuk Council and Nishnabi Aski Nation as the organizations working with the affected communities
- full sets of all study-related documents should be available in public institutions for public use

and reference, such as band or municipal administration offices, libraries or schools, in local and regional centres, including Attawapiskat, Moosonee, Timmins, Sudbury, Toronto and Ottawa; these should be in addition to those provided directly to the First Nation governments and organizations

- full sets of all study-related documents should be available on-line, either on the site operated by the Canadian Environmental Assessment Agency (CEAA) or on a dedicated site to which there are links from the internet sites operated by CEAA, by De Beers and by the several federal authorities.

- notices should be sent to all those who have expressed interest in the project, in addition to being placed in local newspapers; published notices should also be placed in the various First Nation newspapers and magazines

- the statement that “(u)nless other wise requested De Beers will not be required to send out all the supporting documents to these other participants” is unclear and unhelpful and should be removed. For example it is unclear who the “other participants” are that the sentence refers to, and it is inconsistent with other parts of this section and with the principles of public participation that De Beers should be seeking blanket immunity from having to provide participants with documents related to the project.

- the consultation period on the comprehensive study should be longer than 60 days; at minimum, this period should be at least 120 days, and if the period should include any period of key holiday or other activities (Christmas, summer months, main hunting periods) the period should be extended. A consultation period of 60 days unduly and unreasonably limits the interested parties’ ability to receive, review and reflect on the document(s), consult with colleagues and constituents, seek expert or technical advice, seek and gain clarification of any unclear portions from either the proponent or the federal authorities, and then prepare and submit comments. Many organizations - both First Nation and other - have internal review and accountability processes which are quite demanding, in addition to the efforts demanded of the review itself, and a 60 day review period is excessively limiting and will severely limit participation.

- the 30 day review period for “additional information” is also too short and will adversely affect interested parties’ ability to participate, as per the above stated

- these timing concerns are particularly urgent in the case of the Victor Project’s review, given the significance of the project and given the absence of a participant funding program; reviews will be undertaken, of necessity, as a volunteer effort or as an additional and unfunded responsibility added to already over-full workloads in most if not all cases, and many of the interested parties will, of necessity, be seeking technical and expert assistance on a pro bono basis, given the lack of intervenor funding; under these circumstances, timelines must be accommodating of the public interest and allow sufficient time to interested parties to conduct their review and prepare comments

4.0 The Comprehensive Study and the CSR

- consistent with Section 23 of the Act, Section 4.2 of the Guidelines should clearly state that the Minister may refer the project to a mediator or review panel on the basis of public concerns, in addition to the Minister being able to refer the project to a mediator or review panel on the basis of either uncertainty or the likelihood of significant adverse environmental affects

- the Guidelines should clearly set out the course available to the Minister and the Responsible Authority(ies) should the project be determined to have project is likely to cause significant adverse environmental effects that cannot be justified, as per Sections 22 and 37 of the Act, i.e. to not

- issue any of the necessary authorizations or permits that would allow the project to proceed
- the draft Guidelines indicate that a suggested table of contents is “provided in Appendix A”, but that appendix was not attached or included with the copy we were provided for the purpose of review; Appendix A should be circulated for comment, and sufficient time allowed for all interested parties to review and reconsider their comments in light of the “suggested table of contents”
 - the statement in Section 4.2 of the draft guidelines that “De Beers may begin to prepare the draft CSR as the essential details and results of the assessment are submitted to and accepted by the RAs” strongly suggests that the review and comments of the First Nation and public participants is of no bearing and will be of no effect; this must be corrected to identify how the public review results will be incorporated into the CSR
 - the expectation that only a plain language summary or “other portion” of the CSR would be translated into local languages (ie. Cree, and potentially Oji-Cree) is unacceptable; all documents that are translated into French should also be translated into at least Cree, and Oji-Cree if any such need is identified by review participants in general, and the interested First Nations in particular
 - consistent with Section 55 of the Act, the public registry is to be “established and operated in a manner to ensure convenient public access to the registry”; for the Victor Project, given the dispersed locale of the interested parties, more than one “paper” copy of the registry will be required in order to ensure convenient public access; at minimum, a full paper copy should be available in Attawapiskat, in Timmins, and in Ottawa, and an electronic version available on-line
 - at present, the public registry document listing appears (as of January 19, 2004) to include documents dated back only to July 10, 2003, despite their having been discussions among the Canadian Environmental Assessment Agency, federal departments and the proponent to approximately the first part of 2001²; all documents and correspondence related to the project and its development, the scoping of its environmental assessment, the identification of responsible authorities and lead department, and other related matters should be included in the public registry
 - the public registry should be available on-line, with both the document listing and an electronic version of the documents posted; in all cases and particularly in those instances where documents or parts of documents (such as maps) are not easily “downloadable”, an email address and telephone number should be provided for registry users to request a hard copy

5.0 Environmental Assessment Method

- the statement “where data or models are lacking, best professional ... judgement may be used” should be removed; the reliance on “best professional judgement” is subject to the biases and interests of the “professional” who is making the judgement and the contractual arrangements that “professional” may be retained under or constrained by
- in any cases where “best professional judgement” may be in any way or manner an influence or factor in conclusions that the environmental study will rely upon, this should be clearly identified, and resources should be made available to public participants (First Nations and others) to retain an expert in that field to provide a peer review
- while we wholly defer to the First Nation participants in this review on matters related to traditional knowledge and its collection and use, we are uncomfortable with the notion that “De Beers shall make all reasonable efforts to collect and facilitate the collection of traditional knowledge related to the proposed project”; in our view, it is the responsibility of De Beers to facilitate the collection and application of traditional knowledge by providing the necessary

resources to the First Nations to do that collection and maintenance of areas of traditional knowledge, but it is not the role or rightful place of De Beers or their consultants to do that collection or application themselves

- spatial boundaries for the cumulative effects study area should take into account not just the “valued ecosystem components”, but also the social and cultural aspects of the project and its potential cumulative effects

- the temporal boundaries with respect to the post-closure period should be clearly defined

- a rationale for each of the categories of spatial and temporal boundaries should be provided, and should reference how the views and concerns of the interested parties, including the First Nations, were taken into account

6.0 Description of the Project

- the project description should include the post-closure / post-abandonment period, including longer term monitoring, contingency planning, etc.

- the description of the project should include the exploration and development activities, and their associated environmental and social effects

- the description of the project should include all aspects of the project and its associated activities, including transportation; energy and fuel use, supply and sources; hosp

- the description of the project should be comprehensive, and should include but not be limited to the following: a project overview; project schedule; the proposed mining activities including volumes, rate of mining, etc; the proposed methods for kimberlite processing; methods and strategies for the management of mine waste rock, processed kimberlite, and solid waste; all aspects of water management, for both industrial and human use, including sewage works and waste water treatment, and water transfers and water supply issues; mine support facilities and functions, both on-site and off-site, including hospitality services, transportation, fuel and energy, etc; mine operations an management, including hiring policies and practices, purchasing policies and practices, work places issues including shift rotation and gender and cultural issues, and the function, role and composition of internal and external mine advisory committee(s); and decommissioning, closure and post-closure activities and strategies.

- a baseline study should be prepared which describes the environment at large

7.0 Description of the Existing Environment

- the environment should not be described only in relationship to its “use” by De Beers; the description of the environment should be broad and unconstrained by an single industrial interest

- the description of the environment should include the physical, social, cultural and economic environment

- the description of “air” should include long distance pollutants and their presence and effects, including and particularly persistent organic pollutants

- the baseline study should not be limited to those parameters which “could be affected by the project”

- the description should include the current environmental load (i.e. of contaminants), contrast that to conditions of the pre-industrial period, and to the projected environmental load should the Victor Project proceed

- the discussion of climate and meteorology should include a discussion of climate change and related extreme weather events; in particular, this discussion should consider the effects of climate change on future water supplies - both surface and groundwater - and should include project of

- these effects over various time frames, such as 25, 50, 100 and 200 years
- the discussion of climate change should not be relegated to Section 8.15; sections 8.15 and section 7.2 should be mutually supporting and internally consistent
 - any hydrogeological studies and/or models which are relied upon must be clearly identified, include an description of the model used and its inputs, and be peer reviewed by experts identified and / or accepted by the public review participants
 - surface water and groundwater interactions should be discussed in detail, including a thorough description of the likely or potential environmental effects of transfers between surface and groundwater / ground and surface water, due to differences in pH, salinity, nutrients, metals, etc.
 - any studies or observations of effects on aquatic organisms and their habitat as a result of activities during the exploration and development periods of the Victor Project should be described in detail, including any studies, reports or observations related to the conduct of water pump tests
 - species at risk should be discussed with respect to each of three spatial boundaries
 - there are various “Ecological Land Classification Systems” developed and in use to varying degrees in different jurisdictions; the “Ecological Land Classification System” reference in Section 7.9 of the draft guidelines should be described in detail, and its appropriateness for the Mushkego territories should be explained
 - the draft guidelines (Section 7.9) state that “..plant communities ... shall be documented so that efficient and suitable selection of species for reclamation may be achieved”; ecologically appropriate would be a more suitable criterion for the selection of plant species to be used during reclamation
 - the proposed description of human health is inadequate; statistics and numbers do not provide a reasonable picture of human health, and will certainly not provide a basis for evaluating the potential or experience effects of the project
 - a description of human health should be based on human health studies and evaluations conducted at the community level, using both statistical and anecdotal references
 - we concur with the inclusion of physical, social, cultural and economic as determinants of health status; other determinants such as spiritual and mental, and community and family structures should also be included
 - the socio-economic descriptions should be provided for all three spatial areas, but in particular for the local and regional study areas
 - the socio-economic descriptions should include a description of the informal economy

8.0 Environmental Effects

- the analysis of technologies available to minimize the release of air contaminants should be of best available technology, and not be limited to that which the proponent or its consultants deem to be “economically achievable”
- when proposed treatment technologies are described or methods proposed, the discussion of their reliability and performance should not be limited to “the expected life of the project” if the application of the technology or method will or may extend into the closure and post-closure period
- the discussion of environmental effects should be supported by examples and case studies which demonstrate the proponents’ experience with operations under similar circumstances over a similar time frame, i.e. in permafrost, muskeg, coastal areas, remote sites, etc. over a 10-20 year period

- if the discussion of environmental effects can not be supported by examples and case studies which demonstrate the proponents' experience with operations under similar circumstances over a similar time frame, i.e. the proponent lacks such experience, case studies of the experience of other operators should be provided, with an explanatory note
- the intent of having "De Beers ... provide its informed view of 'ecologically representative areas' in the ecoregion" is unclear, and the purpose of such a view being provided is also unclear; the view of others with expertise in this field would be a more helpful contribution to the study process, and should be provided, rather than the "view" of the proponent, which as an organization is generally not recognized as having any expertise in either this eco region or in the sciences associated with the identification of ecologically representative areas
- special consideration should be given to species listed on Schedules 1, 2 and 3 of the Species at Risk Act, not just those listed on Schedule 1
- the assessment of potential effects of the project on affected communities should be supported with case studies and a human health study conducted by each of the affected communities; De Beers should provide the necessary resources and adequate time should be allowed for the conduct of these studies
- the assessment of socio-economic effects should pay particular attention to the effect within communities of wage/income/wealth differences created due to the introduction of a new source of employment which is available to some but not all community members; the assessment should include consideration of effects with family, community and political structures
- the cumulative effects study should not be limited to "measurable effects on a VEC"
- the study of cumulative environmental effects should not be constrained by the lack of existing forecasting models, and should not be overly reliant on the use of models
- the study of cumulative environmental effects should include the examination of the cumulative effect of this project and other projects and activities, but should also examine the cumulative effect of activities within this project, for example, the cumulative effect of exploration and mining activities

9.0 Followup Programs

- the proposal by De Beers for follow-up programs should include a timeline, and a public participation plan
- notwithstanding the above comment, given that it is the responsibility of the Responsible Authority to design and deliver the follow-up program (in accordance with Section 38 of the Act) it may be more appropriate for the Responsible Authority to take the lead in the early stages of the review process in designing and consulting on the followup programs
- the follow-up program should include long term monitoring and reporting, with a single agency and contact identified as the public interface; that agency should be selected on the basis of its expertise related to the key activities of the followup program, such as environmental monitoring

Conclusions

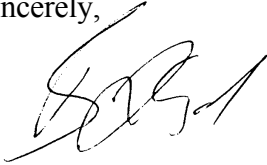
In general, while the draft is a reasonable enough starting point for a discussion of the comprehensive study process and subsequent report, it is still very much a "draft", with many improvements needed. Given the deficiencies of the draft guideline, the absence of Appendix A from the version of the draft guidelines that was circulated, and the limited notice, including by CEAA, De Beers and through the public registry, the environmental assessment and review

process would be best served by

- a) a redrafting of the draft guidelines by the federal departments
- b) the preparation by De Beers of a summary of their public and aboriginal consultation to date
- c) the circulation of that summary, with the re-drafted guidelines and the missing Appendix A, for a second comment period.

Thank you for the opportunity to comment on these draft guidelines, and for your kind consideration of our recommendations for the next steps in finalizing the draft guidelines. Please do not hesitate to contact me if any clarification or further detail would be of assistance to you in following up on the concerns outlined above.

Sincerely,



Brennain Lloyd
Northwatch

- cc. Attawapiskat First Nation
Mushkegowuk Council
Nishnawbe Aski Nation
Steve Momy, Timmins District, Ministry of the Environment
Rick Tapley, Moosonee Area Office, Ministry of Natural Resources
Tom Hogarth, Department of Fisheries and Oceans
Debra Myles, Canadian Environmental Assessment Agency
Paul Schaeffer, Canadian Environmental Assessment Agency
Mr. Jeremy L. Wyeth, Vice President, Victor Diamond Project, De Beers Canada
Dr. Jonathon A. Fowler, Vice President, Aboriginal & Environmental Affairs, De Beers Canada

ENDNOTES

1. Email communication of 2/21/2002 from Paul.Schafer@ceaa.gc.ca to Northwatch
2. Email communication of 2/21/2002 from Paul.Schafer@ceaa.gc.ca to Northwatch