

MEMORANDUM FOR THE DIRECTOR GENERAL

**MEETING WITH DENIS LEGACÉ, ON DEBEERS
PROPOSED VICTOR DIAMOND MINE ATTAWAPISKAT, ONTARIO**

(Information Only)

SUMMARY

- DeBeers Canada Inc. (DeBeers) proposes to develop a diamond mine in Northern Ontario near the aboriginal community of Attawapiskat. Fisheries and Oceans Canada (DFO), Natural Resources Canada (NRCan) and Indian and Northern Affairs Canada (INAC) are likely to trigger an environmental assessment (EA), as Responsible Authorities (RAs), under the *Canadian Environmental Assessment Act (CEAA)*.
- The Ontario provincial government has stated that they are not required to conduct any environmental review on this project and further, have the authority to issue their provincial permits throughout. The province has indicated that a third party must request that the province conduct an environmental assessment (EA) for their consideration; to date, no such request has been made. Environment Canada (EC) advised that they were prepared to file such a request however, the Canadian Environmental Assessment Agency (the Agency) was not supportive at the time.
- The proposed Victor Project lies within the James Bay Lowlands within the traditional lands of the Attawapiskat First Nation. This is the first major development in a pristine region of northern Ontario. DFO has acknowledged the treaty rights of the Attawapiskat, and provided assurance that DFO would not proceed with any environmental review or take any regulatory decisions with respect to the Victor Project without first consulting with the Attawapiskat First Nations.
- DeBeers has indicated that they want to have a broadly scoped Comprehensive Study (CS) completed by the fall of 2003. The Agency is supportive of having a very broadly scoped project subject to an EA pursuant to *CEAA* DFO supports as broad an EA as possible, within our legislative authority that sets out limits on how broadly we can scope projects.

Background

- A letter dated August 1, 2002 to DFO from Chief Tookate advised that the AFN does not want DFO to issue any regulatory authorizations or to proceed with a *CEAA* review of the Victor Project without first engaging in a meaningful dialogue with the AFN. They also advised that they are signatories to Treaty 9 (for which the Province of Ontario is co-signatory) and they wanted to insure that their treaty rights would not be infringed by any decisions DFO may make with respect to this project.
- DFO responded on October 23, 2002, to the letter from the Chief Tookate by acknowledging their treaty rights and provided assurance that DFO would not proceed with any environmental review or take any regulatory decisions with respect to the Victor Project without first consulting with the AFN.
- Representatives from DFO, the Agency and NRCan were scheduled to meet with AFN on March 18, 2003 to discuss *CEAA*, and the scoping issues for the Victor Project. This meeting was to be with AFN chief and council as well as their legal council; but was cancelled due to problems with flights and has not been rescheduled.
- REDACTED
- DFO was copied in a letter sent to DeBeers (March 24, 2003) by the AFN indicating that a (CS) will meet the requirements of the community if it meets the following conditions:
 - the CS is scoped broadly
 - alternative means are considered, specifically the all season road and a new airstrip at the community
 - cumulative impacts of other diamond projects, specifically the Tango Project is included, and,
 - AFN is provided with adequate funding to be engaged in the EA process.
- It is not known if the AFN fully understands the Federal EA process and what is involved in a CS pursuant to *CEAA*.
- At an April 14, 2003 meeting organized by the Agency, DeBeers presented an overview of the proposed development and provided a working draft of their environmental report for the Victor Project. At that time, DeBeers indicated that they wanted the Federal Government to conduct a CS, and that they expected the process be completed and regulatory approvals provided by spring 2004.

- DeBeers also indicated at the April 14, 2003 meeting that they intend on proceeding with the site development during the Federal Environmental Review, constructing aspects of the project not requiring federal regulatory approval.
- The Ontario Provincial Government has stated that it is not required to conduct any environmental review on this project and has been issuing their permits throughout. The province has indicated that a third party must request that the province conduct an environmental assessment for their consideration. To date, no such request has been made. EC advised that they were prepared to file such a request however, the Agency was not supportive at the time.
- DFO has reviewed the working draft provided by DeBeers and as of this time has identified the following project components which may require DFO approval:
 - The construction of the barge site near the Community of Attawapiskat will likely require a Ss. 35(2) *Fisheries Act* authorization. Dredging of the bay may or may not require a *NWPA* approval.
 - Two or three crossings associated with the winter road may require *NWPA* Ss. 5(1) approval.
 - The relocation of South Granny Creek to access the kimberlite pipes via an open pit will require a Ss. 35(2) *Fisheries Act* authorization.
 - The dewatering of the Nayshkootayaow River due to the groundwater pumping to dewater the open pit may require a Ss.35(2) *Fisheries Act* authorization.
- The groundwater in the area of the open pit site is moderately saline and not suitable to pump into the Nayshkootayaow River due to the high salt content. As a result, DeBeers proposes to discharge the groundwater into the nearby Attawapiskat River.
- DeBeers has indicated that the water will just meet provincial drinking water standards by the time it reaches the community of Attawapiskat 100 km downstream of the discharge site. DFO is seeking a *Fisheries Act* Ss. 36(3) assessment from EC on the deposit of salt water in the Attawapiskat River.
- DFO as of this time may have a trigger for a CS (under S. 10 of the *CEAA Comprehensive Study List Regulations*) as a result of the groundwater pumping and subsequent dewatering of the Nayshkootayaow River. DeBeers has indicated that they plan to pump water from the Attawapiskat River into the Nayshkootayaow for mitigation.

Analysis / DFO Comment

- DFO requires additional details from DeBeers on aspects of the project requiring *Fisheries Act* authorization or *NWPA* approval. To date, DeBeers has not applied to DFO for any authorizations or approvals nor has its development proposal been

finalized. Discussions with the Region's Habitat Management Program staff are ongoing with respect to their ongoing assessment of the proposal.

- Other RA's for this project include NRCan (for an explosives manufacturing permit) and INAC (for a staging area in the community of Attawapiskat). Federal Authorities (FA's) include EC and Health Canada.
- There have been several meetings of RA's to discuss scoping. DFO has outlined what our possible triggers might be for the project and indicated that we would scope to our regulatory triggers, up to and including the possible conduct of a CS.
- NRCan indicated that they would like to have a broadly scoped EA to capture all aspects of the proposed mine development. The Agency supports the approach proposed by NRCan.
- NRCan has indicated that they intend to have a scoping decision made by June 27, 2003. They would prefer to have a joint CS with a project scope to include the mine and all aspects of the development proposal. They have also indicated that they are prepared to recommend referral to a panel if the RAs can not agree on a broadly scoped CS.
- INAC has stated that they are still not sure if they have a trigger and as such are not sure if they will be an RA. INAC has indicated that, if they were an RA, they would prefer to have a broadly scoped CS, however, they would support referral to a panel if the RAs cannot agree on the scope.

Recommendation / Next Steps

- A meeting of the RAs is scheduled for June 25, 2003, to discuss the scoping options document recently circulated by the Agency. Depending on the outcome of this discussion, a meeting with the Agency may take place on June 26, 2003 to attempt to resolve the issue of scoping.
- Denis Legacé (DG Mineral and Metal Policy Branch, NRCan) is meeting with you on June 25, 2003. It is believed that Mr. Legacé may propose that the RAs refer the project to a panel in the absence of agreement on scope for a CS. It is recommended that I and/or Glen Hopky participate in this meeting.

Richard Nadeau

K. Houston/G. Hopky/cjr



2003-005-00424

To: /

Date :

À : Mr. Richard Wex

Subject: / **MEETING WITH DENIS LEGACÉ ON DEBEERS PROPOSED VICTOR**

Objet : **DIAMOND MINE, ATTAWAPISKAT, ONTARIO**

From / De : Glen Hopky, Senior Advisor, Habitat Operations

Via : Richard Nadeau, Director, Habitat Operations

For Signature / Pour Signature

Information

For Comments / Pour commentaires

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Ms/M^{me} Kim Houston

Drafting Officer / Rédacteur : Kim Houston (991-6110)/G. Hopky/Richard Nadeau/cjr

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