



4th Floor, Courthouse
4903 - 49th Street
P.O. BOX 1320
YELLOWKNIFE NT X1A 2L9 E-mail: jana_shoemaker@gov.nt.ca

Phone: (867) 873-7199
Fax: (867) 873-0234

OUR FILE: 14-36-237

June 6, 2014

Sahtu Land and Water Board
P.O. Box 1
Fort Good Hope, NT
X0E 0H0

Attention: Tony Morris, Regulatory Specialist

Dear Sir:

Re: Response to Board Direction on Procedure

I am writing in response to directive six in the Board Direction on Procedure emailed on June 5, 2014. In this Direction, the Sahtu Land and Water Board decided that the parties will have access to the applicant Imperial Oil's closure and reclamation information, which they seek to submit under confidential cover. This access is subject to the parties signing an undertaking to maintain the information in strict confidence.

The GNWT has several concerns with the provided Direction. The Board's Direction makes it unclear whether the applicant's 200 pages are confidential under the Board's rules, and by implication the *Access to Information Act* (the "Act"). In our view, such a decision requires the case law on the relevant sections of the Act to be applied to Imperial Oil's information. This is an objective test that cannot rely solely on the applicant's assertions of confidentiality.

A decision on the confidentiality will have to consider not only the objective test, but the public nature of the process under the *Mackenzie Valley Resource Management Act* (*MVRMA*). The boards established by the *MVRMA* were done with the purpose of enabling Mackenzie Valley residents to "participate in the management of its resources" (*MVRMA*, s.9.1). Withholding closure and reclamation information from residents and other interested parties cannot be done lightly and must consider the purpose of the Board and its legislation.



In order to progress this process, the GNWT is willing to sign an undertaking on the understanding that a determination on the confidentiality of the applicant's information is forthcoming. We expect that the Board will evaluate the information on a document by document basis, as opposed to making a determination on the 200 pages as a single unit. As we said in our June 3 letter, we are willing to work with the parties to establish a transparent process that protects Imperial's privacy interests.

We understand that, in the interest of progressing the water licence application, the determination of an appropriate process will be deferred until the Board issues a further Direction on Procedure following party submissions on July 18, 2014. This means that any discussion of closure and reclamation costs will be adjourned until a later date and will not form part of the Public Hearing on June 12 and 13, 2014.

The GNWT is prepared to work towards a resolution of this matter in the near future.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Shoemaker', written in a cursive style.

Jana Shoemaker
Legal Counsel
Legal Division