AFTER THE ENVIRONMENTAL ASSESSMENT
A Tale of Development on Attawapiskat Traditional Territory

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The federal Environmental Assessment (EA) for De Beers' Victor Project received approval in August 2005. In June of that same year, Attawapiskat First Nation had agreed to the development by passing the Impact Benefit Agreement (IBA) in a vote (85.5%) in favour of the IBA and the mine development. Since that time, there has been some work looking at the EA process (Bowie, 2007) and former Assembly of First Nations National Chief, Phil Fontaine in a speech to the Prospectors and Developers Association, on October 12, 2007, said that the De Beers/Attawapiskat model was what development should look like; however, no one has looked at or even widely publicised what has happened since the IBA and EA were approved. With construction completed and the mine officially opened in July 2008, how has development proceeded since the EA? The EA was not the end of Attawapiskat's involvement in Victor but only the beginning. Chapter 7 — the environmental chapter of the IBA — has been fully implemented for over two years. This paper will document the processes and procedures that have been put in place to ensure Attawapiskat First Nation continues to be involved, consulted and accommodated as the mine operates.

BACKGROUND

The De Beers Victor Project is located on Attawapiskat First Nation traditional lands, approximately 90 km west of the community of Attawapiskat and 500 km north of Timmins, on the James Bay lowlands in Ontario. The federal Environmental Assessment (EA) for De Beers' Victor Project received approval in August 2005. In June of that same year, Attawapiskat First Nation had agreed to the development by passing the Impact Benefit Agreement (IBA) in a vote (85.5%) in favour of the IBA and the mine development. Since that time, there has been

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some work looking at the EA process (Bowie, 2007) and Assembly of First Nations National Chief, Phil Fontaine in a speech to the Prospectors and Developers Association, on October 12, 2007, said that the De Beers/Attawapiskat model was what development should look like; however, no one has looked at or even widely publicised what has happened since the IBA and EA were approved. It is important to note that Attawapiskat First Nation had several mechanisms in place to ensure a successful development occurred on their lands:

- an IBA in place before construction began;
- access to the raw environmental data;
- independent review of the data, reports, and permit applications;
- a seat at the permitting table throughout construction and development; and
- a mechanism in place through the IBA to deal with unanticipated environmental effects.

It is believed that these mechanisms have been a key factor in the success of the "Working Together" partnership between the Attawapiskat First Nation and De Beers.

AFTER THE ENVIRONMENTAL ASSESSMENT

Chapter 7 — the environmental chapter of the IBA — has been fully implemented for over two years. The processes and procedures that have been put in place to ensure Attawapiskat First Nation continues to be involved, consulted and accommodated as the mine operates are outlined and discussed in the following sections.

Consultation

Consultation has not finished with the completion and sign-off of the environmental assessment, but it has changed. Part of the IBA agreement with De Beers outlined the environmental consultation process. This process included the formation of the Environmental Management Committee (EMC) with a requirement to meet monthly through construction and every two months through operations. Also, at least one community meeting a year is required to be held; although over 20 have been held since the approval of the EA. The Traditional Ecological Knowledge Committee (TEK Committee) has also been involved throughout construction, as well as periodic briefings to Chief and Council. Between September 2005 and May 2008, 64 meetings have been held with the community/TEK Committee, EMC and Chief and Council. There have been many more meetings and conference calls between De Beers, Attawapiskat First Nation Director of Lands and Resources, as well as various government agencies and non-governmental organizations.

The Federal and Provincial governments and De Beers have agreed to all permits being reviewed by Attawapiskat First Nation. No permit is issued without a letter of support from Attawapiskat First Nation. The review process includes information sharing and input from a number of sources: the EMC, Chief and Council, the Community, the TEK Committee, consultants working on the community's behalf and De Beers. This review process is lead by the Attawapiskat First Nation Director of Lands and Resources.

Environmental Management Committee (EMC)

The Environmental Management Committee is a requirement of the IBA. The terms of reference are contained in the IBA. It consists of the Attawapiskat First Nation Director of Lands and Resources (DLR), two Attawapiskat First Nation community members, the Safety, Health and Environment Manager (SHE Manager) for Victor Mine and two De Beers staff members (at this time those members are the Senior Environmental Co-ordinator, and the Technical Services Manager). The SHE Manager and the DLR alternate chair/secretary duties. Meetings have been held monthly since February 2006, with only three meetings missed due to scheduling difficulties and the traditional goose hunt in April. The committee has worked together in a spirit of cooperation and good faith with a view of making the best decision possible. It is considered by some the most successful part of the IBA. The committee reviews permits, environmental incidents, environmental and heritage resources reports, the results of environmental monitoring programs, and makes recommendations regarding environmental issues or concerns related to the mine.

Chief and Council

Chief and Council are briefed as time permits. The Chief and Council agenda is often full and getting time on the agenda is challenging; however; since the elections held in July 2007 the new Chief and Council have decided to schedule special meetings to be briefed on project-related information and other issues. The Chief is copied on all letters sent regarding permit-related issues. The Chief also receives copies of meeting summaries from community and TEK Committee meetings.

Community

Community meetings are held regularly as needed. Through the construction phase there have been approximately twenty meetings held since the environmental assessment was completed and permitting for construction began. The project community channel on the local cable television service has also been utilised to provide information to the community. A community newsletter and website are also proposed, although they have not been fully implemented at this time (May 2008).

Traditional Ecological Knowledge Committee (TEK Committee)

The Traditional Ecological Knowledge Committee was formed as part of the environmental assessment work but existed in other forms before this; it was originally a steering committee developed to guide/inform exploration around the Victor Project. It was originally thought the committee may have served its purpose, particularly since it is not mentioned in the IBA; however, it became apparent early in the construction phase that this committee was a valuable piece of the community's continued involvement in the Victor Project. Meetings have been held regularly, as needed through construction. TEK continued to be collected, on a focused basis, to assist with environmental issues and programs during the operation of Victor Mine.

Mining Monitor

The Mining Monitor is the "eyes and ears" of Attawapiskat First Nation at the Victor Project site. This position works observing the environmental staff, taking samples, participating in the environmental management and generally ensuring that the community's concerns and interests are respected. The Monitor files reports to the DLR and senior Victor environmental staff after each rotation. These reports are also reviewed by the EMC and he makes periodic reports at meetings in the community. The Monitor's roles and responsibilities are outlined in the IBA. The Monitor has access to the entire site and any environmental reports.

Conflict Resolution

The conflict resolution process is set out in the IBA. In general terms, the steps are as follows:

- Any EMC member may commence the Environmental Dispute Resolution process by providing written notice to the EMC Chairperson
- The EMC has 30 days to find a resolution to the Environmental Dispute
- If the EMC cannot find a resolution to the dispute, the matter would typically be referred to the Chief and the General Manager of the Company, who would do one of the following:
  - Resolve the dispute;
  - Refer the dispute back to the EMC for further consideration with appropriate direction; or
  - In the case of a complex technical issue, refer the matter to an independent environmental arbitrator.

In all cases, the intent is to resolve the dispute within 30 days.

A list of independent environmental arbitrators was agreed upon by Attawapiskat First Nation and De Beers following the signing of the IBA, but prior to the occurrence of any environmental disputes. As a result, any disputes should be resolved in a transparent and unbiased manner. Decisions of an arbitrator are considered to be final and binding upon both the Attawapiskat First Nation and De Beers. Costs associated with an arbitrator are shared between Attawapiskat First Nation and De Beers.

Follow-up Program Agreement (FUPA)

The Follow-up Program Agreement is a result of the environmental assessment. It covers moni-

toring that may not be part of any permit issued in the construction or operation of the mine but that has been agreed to as part of the EA. At this time Attawapiskat First Nation, the Federal Government and De Beers are signatories to the agreement. It covers the following areas of study:

- Atmospheric Systems (air quality and climate)
- Surface Water Systems (water quality, creek and river flows, and fish habitats)
- Groundwater Systems
- Terrestrial Systems (wetlands and wildlife)
- Malfunctions and Accidents
- Traditional Pursuits, Values and Skills
- Heritage Resources
- Environmental Health
- Socio-economic (business, employment, training).

It also requires the formation of a number of committees to over see this work. Community participation in these committees and monitoring programs is vital to its success.

The FUPA is envisioned to be a "living program", and thus will change over time based upon the results of the various monitoring programs and recommendation from the committees. Ultimately the intent is to ensure that concerns of Attawapiskat First Nation are addressed and that the environment is protected.

DISCUSSION

To date, the implementation of Chapter 7 of the IBA has gone well and Attawapiskat First Nation and De Beers have worked together to ensure permits and environmental programs are good for both groups. However, there will be challenges in the future.

Continuing to engage the community in the consultation process will be a challenge due to the amount of environmental permits and programs associated with the project. Meetings are regularly planned to keep the community informed and copies of the presentations are often played on the project community channel, through the local cable service; however, meeting turnout can be small at times and complaints that people don't know what is going on occur and these can be frustrating. Meetings are translated and translated summaries of the material are often available. It is not perfect but everyone involved continues to work at keeping the community informed.

Also, community participation in the FUPA may be a problem as funding is not available on an ongoing basis; it must be secured each year. Funding for the research is available so the monitoring will occur. In addition, the anticipated evolution of the FUPA programs, based upon monitoring data, could create misunderstandings if the changes are not clearly and effectively communicated.

CONCLUSIONS/ RECOMMENDATIONS

1. The structure and conditions in Chapter 7 of the IBA are appropriate for both Attawapiskat First Nation and De Beers and provided a solid and realistic platform for implementation of the agreement.
2. The implementation of the Chapter 7 has been successful because both Attawapiskat First Nation and De Beers have been committed, via the EMC, to working together to make the best decision possible for the community and the project. Attawapiskat First Nation and De Beers have honoured the commitments in Chapter 7.
3. Despite the on-going challenges, the EMC has been able to establish and maintain channels of communication with Chief and Council, the community, the TEK committee, the company, and various government agencies and non-governmental organizations. Although it takes an enormous amount of energy, it is clear that effective communication is fundamental to the success of the implementation of Chapter 7.
4. Sufficient funding has been provided via the IBA to allow the operation of the EMC (including hiring the DLR), the establishment of a Mining Monitor position at the Victor Mine site, allow of independent environmental arbitrators, translation services, and miscellaneous studies and programs required to effectively implement Chapter 7.
5. Funding needs to be made available from the Federal Government for community participation in FUPA.

REFERENCES

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