

FILE NO. - 009

**REPORT WITH RESPECT TO THE APPLICATION FOR REVIEW
OF [REDACTED] WITH RESPECT TO INFORMATION REQUESTED
FROM SASKATCHEWAN ENVIRONMENT AND RESOURCE MANAGEMENT**

[REDACTED] requested access under *The Freedom of Information and Protection of Privacy Act* (the "Act") to:

"The Cameco EIS for an additional waste disposal at Key Lake Uranium Mine..."

It is not questioned that "EIS" refers to an environmental impact statement within the meaning of *The Environmental Assessment Act* E-10.1 with respect to a proposed tailings disposal project.

The relevant provisions of *The Environmental Assessment Act* are as follows:

"9(1) The proponent of a development shall, in accordance with the regulations:

- (a) conduct an environmental impact assessment of the development; and
- (b) prepare and submit to the minister an environmental impact statement relating to the development.

(2) The proponent shall bear all costs incurred in carrying out an assessment and in the preparation and submission of a statement.

10 When the minister becomes aware that an assessment is about to be conducted, he shall immediately give notice of the assessment in any manner that may be prescribed in the regulations.

11(1) The minister shall cause a review to be prepared of each statement that he receives.

(2) When the review mentioned in subsection (1) is completed, the minister shall:

- (a) make the statement and review available for public inspection; and
- (b) give notice, in the manner prescribed in the regulations, of the locations at which the statement and the review may be inspected, and may prescribe any conditions relating to the inspection that he considers appropriate.

12 Any person may:

- (a) inspect a statement and review that is available for public inspection pursuant to subsection 11(2);
- (b) make a written submission to the minister within 30 days from the date when the minister first gives notice pursuant to subsection 11(2), or, if the minister considers it appropriate, within an additional period of 30 days."

These provisions must, however, be read subject to the provisions of the Act which provides:

"23(1) Where a provision of:

- (a) any other Act; or
- (b) a regulation made pursuant to any other Act;

that restricts or prohibits access by any person to a record or information in the possession or under the control of a government institution conflicts with this Act or the regulations made pursuant to it, the provisions of this Act and the regulations made pursuant to it shall prevail.

(2) Subject to subsection (3), subsection (1) applies notwithstanding any provision in the other Act or regulation that states that the provision is to apply notwithstanding any other Act or law."

These provisions do not apply to a list of statutory provisions which are set out in subsection 23(3) of the Act or to any prescribed act or prescribed provisions of an act excluded by regulation, but *The Environmental Assessment Act* has not been excluded.

The Department, apparently wishing to follow the procedure provided for in *The Environmental Assessment Act*, responded to [REDACTED] request by a letter dated September 23, 1994 as follows:

"I am in receipt of your letter dated September 19, 1994 requesting access to information related to Deilmann In-Pit Tailings Disposal.

Please be advised that the technical review comments and the technical review have not been completed yet. It will be made available to you as soon as it is completed.

You may make arrangements at that time to come and view these documents in our office at no charge."

Upon receiving [REDACTED] Request for Review, I asked the Department to provide me with a letter setting out the precise sections of the Act upon which they were relying and consequently received a letter from the Department dated November 22, 1994:

"This is in response to your inquiry on the reason for denial of this request.

██████████ request for access to the Technical Review and the Environmental Impact Assessment for the Deilmann In-Pit Tailings Disposal was denied under section 7(2)(e) and 19(1)(b) of The Freedom of Information and Protection of Privacy Act. The project is still in the Environmental Assessment process, and all phases of the review are not complete."

However, the fact is that an environmental impact statement was provided to the Department and is in the process of being reviewed by the minister in accordance with Section 11(1) of that act. The Department has suggested to me that this statement should be considered a "draft", and it is on this basis that they suggest that they do not have the document being requested by ██████████. They have attempted to rely on Section 7(2)(e) of the Act:

"7(2) The head shall give written notice to the applicant within 30 days after the application is made:

- (e) stating that access is refused for the reason that the records does not exist;"

Since it appears to me that the record does exist, I can find no basis for this claim to exemption under subsection 7(2)(e).

With regard to subsection 19(1)(b), it is now apparent that the Department does not seriously propose to rely on that provision. The document in question was provided

to the Department in accordance with the statutory requirements of *The Environmental Assessment Act* which does not in any way suggest that the statement is confidential as between the Department and the proponent of the project.

Accordingly, notwithstanding the disclosure provisions in *The Environmental Assessment Act*, it is my view that the Applicant is entitled to access to this record by virtue of the overriding provisions of *The Freedom of Information and Protection of Privacy Act*, and I recommend that the record be provided to the Applicant.

Dated at Regina, Saskatchewan this day of December, 1994.

**Derril G. McLeod, Q.C.,
Commissioner of Information and
Privacy for Saskatchewan**