



July 25, 2018

Mr. Nathen Richea
Director, Water Resources
Environment and Natural Resources
Government of the Northwest Territories
Box 1320
Yellowknife, NT X1A 2L9

Via email

Mr. Michael Roesch
Senior Program Manager
Crown and Indigenous Relations and Northern Affairs Canada
P.O. Box 1500
4th Floor, 4923-52nd Street
Yellowknife, NT X1A 2R3

Via email

Dear Messrs. Richea and Roesch,

Re: Regulating developments during the closure phase

The purpose of this letter is to request clarification from the Government of the Northwest Territories (GNWT) and Crown and Indigenous Relations and Northern Affairs Canada (CIRNAC) about regulating developments that are entering the final closure and reclamation phase.

We acknowledge this topic has been discussed in many forums and is currently being considered by the GNWT as part of the amendments to the *Waters Act*. However, in the meantime while legislation is being updated, the Boards are requesting clarification regarding this issue, as there are many developments, including mines and CIRNAC Contaminants and Remediation Division (CARD) sites, that will be entering this phase in the near future.

In particular, the Boards are seeking a response to the following questions:

Classification of Undertaking

- 1) When a development goes into closure, what classification of undertaking does it fall under? Does it remain the same (e.g., continue to be a mining and milling project), or does it become a

miscellaneous undertaking? Please consider CARD projects, non-CARD projects, and projects that are grandfathered under section 157.1 of the MVRMA when considering this question.

Licensing Criteria or Triggers

- 2) If the development continues to be classified as the original undertaking during the closure and reclamation phase, and the original undertaking is a type A water licence, will it always be a type A water licence (e.g., during the long-term monitoring phase even when there is no deposit of waste)? At any point, does a type A water licence turn into a type B water licence? In other words, are the triggers outlined in the applicable Regulations for a water licence forever linked to the waste deposited or the water used by the original undertaking? Again, please consider CARD projects and non-CARD projects when considering this question.

- 3) When is a water licence no longer required? Again, please consider CARD and non-CARD projects when considering this question.

Please provide a joint response by **September 14, 2018**. Should you have any questions or wish to discuss this further, please contact Angela Plautz at (867) 766-7461 or aplautz@mvlwb.com.

Yours sincerely,



Shelagh Montgomery
Executive Director
Mackenzie Valley Land and Water Board



Ryan Fequet
Executive Director
Wek'èzhii Land and Water Board



Leonard DeBastien
Executive Director
Gwich'in Land and Water Board



Paul Dixon
Executive Director
Shtu Land and Water Board



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Ms. Shelagh Montgomery
Executive Director
Mackenzie Valley Land and Water Board

Mr. Ryan Fequet
Executive Director
Wek'èezhù Land and Water Board

Mr. Paul Dixon
Executive Director
Sahtu Land and Water Board

Mr. Leonard DeBastien
Executive Director
Gwich'in Land and Water Board

Re: Regulating developments during the closure phase

The Government of the Northwest Territories (GNWT) received your letter dated July 25, 2018 in which the Land and Water Boards of the Mackenzie Valley were seeking response to the following questions in relation to Licencing projects in the closure phase. The specific questions were:

Classification of Undertaking

- 1) When a development goes into closure, what classification of undertaking does it fall under? Does it remain the same (e.g., continue to be a mining and milling project), or does it become a miscellaneous undertaking? Please consider CARD projects, non-CARD projects, and projects that are grandfathered under section 157.1 of the MVRMA when considering this question.

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Licensing Criteria or Triggers

- 2) If the development continues to be classified as the original undertaking during the closure and reclamation phase, and the original undertaking is a type A water licence, will it always be a type A water licence (e.g., during the long-term monitoring phase even when there is no deposit of waste)? At any point, does a type A water licence turn into a type B water licence? In other words, are the triggers outlined in the applicable Regulations for a water licence forever linked to the waste deposited or the water used by the original undertaking? Again, please consider CARD projects and non-CARD projects when considering this question.

- 3) When is a water licence no longer required? Again, please consider CARD and non-CARD projects when considering this question.

The GNWT provides the response to each of these questions below.

In response to question 1) above, the *Waters Act* and Regulations outline both what type of licence, or class, is required for an undertaking and the conditions to be considered by the Board when issuing a water licence. Specifically, s.27(1) sets out that the Board may include conditions in the licence, whether a Type A or Type B, including: e) conditions relating to any future closing or abandonment of the appurtenant undertaking. Also, see s. 5(2)(h) of the *Waters Regulations* which outline the information to be provided to the Board in an application for a water licence. Further, the references to the *Canada Mining Regulations* in the *Waters Regulations* should now reference the *Mining Regulations*, under the *Northwest Territories Lands Act* as the *Canada Mining Regulations* have been repealed. The *Mining Regulations* contemplate the full life cycle of a mine as demonstrated by the definition of mine:

“mine” means an undertaking that produces or has produced minerals or processed minerals from lands to which the Act applies, and includes the depreciable assets that are located in the Northwest Territories and used in connection with the undertaking;

Note this definition is used for the purposes of administering mineral interests and royalties. When this definition is read in context of other sections of the *Mining Regulations*, it is clear that the operation of a mine may include the re-processing of tailings, the reclamation phase and the undertaking as a whole.

Therefore, it is the GNWT's position that once a class of licence is determined as per the Waters Regulations Schedules D through H, that undertaking includes closure. To this end, if a Type A water licence is triggered for an undertaking, the Board should consider closure as part of the scope of the undertaking. Further as per s.27(1), the Board has discretion in setting conditions relating to closure and reclamation including: the submission of Closure and Reclamation Plans, Progress Reports, Reclamation Completion Reports and Performance Assessments (see Guidelines for the Closure and Reclamation of Advanced Exploration and Mine Sites in the Northwest Territories, 2013).

The closure phase of an undertaking should not be considered a miscellaneous activity, unless the undertaking was classified miscellaneous as per Schedule H of the Waters Regulations when it was first licenced. If a third party, private or public, takes over responsibility for an undertaking that party should be assigned the licence as per s.39 of the *Waters Act*. If the water licence has expired, the party applying to conduct closure activities should apply for the type of licence which authorized the original undertaking. To be clear, remediation does not change the class of the undertaking.

With regard to the Makenzie Valley Resource Management Act reference, grandfathering under this s. 157.1 does not affect the classification of a project under the Act and Regulations.

In response to question 2), the duration of a water licence is guided by s. 26(2) of the *Waters Act*. The duration of closure and the post-closure period is site-specific and should be determined on a case-by-case basis. The Boards have discretion in setting the term of any Type A or Type B water licence. When determining licence term, the GNWT recognizes that the complexity of the undertaking and its remediation will have a bearing on how long active remediation will be required. The goal of closure and reclamation is to ensure that the remediated site is stable and no longer a risk to the environment or the aquatic environment.

In response to when a Type A licence can be reduced to a Type B licence, the *Waters Act* and Regulations do not contemplate such a change. If no water is being used and no waste is being deposited then a water licence would not be required. However, from a hypothetical standpoint, reducing a class of licence only seems plausible following successful remediation coupled with several years of performance assessments reporting. Thus, a lesser licence could be associated with longer term

monitoring and maintenance. The *Waters Act* does not grant authority to the Board to change a class of licence, if a class of licence is required pursuant to the Waters Regulations.

ENR is currently in the process of amending the Waters Act and intends to amend the Waters Regulations once the legislative amendment is complete. The questions posed in question 2) could be considered during the review of the Waters Regulations.

In response to question 3), the Waters Regulations are clear on when a water licence is not required, for example, when there is an authorized use or use is under threshold. However, the *Waters Act* and Regulations are not clear on when a water licence, once triggered, is no longer required.

In regard to smaller scale developments, a water licence is no longer required once the undertaking has been completed, remediation and/or cleanup is complete and there is limited risk to the environment. When this is the case, the inspector will conduct a final inspection and recommend to the Board that the water licence be closed.

However, in relation to larger scale activities such as mining, the exact period when a water licence is no longer required is not clear. Hypothetically speaking, when closure and reclamation has been completed, post-closure monitoring suggests the site is stable both physically and chemically and the site has been successfully remediated, a water licence may no longer be required. This stage should include a final site inspection and a recommendation by the inspector to the Board that the water licence can be closed. Note, some assurance that long-term liabilities will be covered (i.e. monitoring, maintenance, etc.) would be required prior to licence closure.

Currently, the Waters Act does not include a process for closing a water licence. This is something that both ENR and regulatory boards feel is an important amendment to the *Waters Act* and it has been included in our legislative proposal.

The GNWT notes that questions about land-related aspects of closure regulation may arise as developments enter closure. GNWT staff are available to discuss these and other closure questions with Board and federal staff.

In closing, thank you for providing this opportunity to further clarify our position on these matters. If you have any questions regarding the responses, please contact Mr. Nathen Richea at Nathen.Richea@gov.nt.ca or 767-9234 ext. 53110.

Sincerely,



Nathen Richea
Director
Water Resources Division

cc. Mr. Michael Roesch, Senior Program Manager
Crown and Indigenous Relations and Northern Affairs Canada

Ms. Lorraine Seale, Director
Securities and Project Assessment, Department of Lands

