



August 24, 2018

Ms. Lisa Dyer and Mr. Robert Jenkins
Environment and Natural Resources
Government of the Northwest Territories
Box 1320
Yellowknife, NT X1A 2L9

Via email

Dear Ms. Dyer and Mr. Jenkins,

Re: Section 11.7 of the *Environmental Protection Act* (EPA) Proposed Exception

The Land and Water Boards (LWBs or Boards) of the Mackenzie Valley (Gwich'in, Mackenzie Valley, Sahtu, and Wek'èezhii Land and Water Boards) considered the request from the Government of the Northwest Territories (GNWT) Department of Environment and Natural Resources (ENR) regarding the proposed exception to the *Environmental Protection Act* (EPA). The LWBs thank ENR for the opportunity to provide feedback. Our comments are presented below.

Proposed wording of the exception

- Use of the word “authorized” introduces potential for confusion with the use of that word in the *Waters Act* and Regulations. The LWBs suggest the word “regulated” be considered instead.
- The use of the future tense is unnecessary. A discharge that requires a licence should not be occurring until the licence is issued, so there is no need to include “will be regulated” and “or will be included” in the exception.
- There is no need to specify where the discharge will go (air, land, water) – if the specific discharge is regulated under the *Waters Act* -- the EPA should not apply.
- What is intended to be included in “site specific conditions”? At times, the Boards may include conditions that reflect or are based on territorial, federal, or other standards or guidelines. It is unclear whether these conditions would be considered “site-specific” in the context of the exception. The LWBs recommend that “site-specific” be removed from the exception.
- The EPA standards provision in the exception means that ongoing care will be needed as the new EPA and its standards are rolled out to ensure conflicts between the EPA and *Waters Act* are avoided.

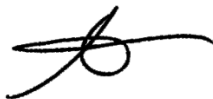
- The EPA applies to federal areas in the NWT as well. The effect of the proposed exception should be considered by ENR in the MVRMA context accordingly.
- Indigenous legislation in relation to their lands should be referenced in the specific conditions as well.

Additional Comments:

- None of the discussion to date addresses the fact that LWBs exercise authority under federal regulations in relation to their land use permitting authorities. How the EPA will interact with those federal instruments should be discussed.
- The LWBs wish to re-iterate that an exception should apply to a specific discharge that is regulated under a water licence, and the issuance of a water licence should not mean that an undertaking or activity should have a “blanket” or “broad” exemption from the EPA. It is our understanding that ENR developed the Review of EPA Examples (Examples) document based on the “blanket” or “broad” exemption approach to explain ENR’s concerns. To be clear, the LWBs have not and continue to not recommend the “blanket” or “broad” exemption approach, so the Examples document continues to confuse the matter. The EPA should regulate those discharges that are not regulated by a water licence and should consequently cover any regulatory gaps. Therefore, for example, ENR should be able to continue to regulate biomedical waste as described in Example 4 of the Examples document.

The Boards look forward to ongoing discussions via the TWG regarding the EPA. Should you require more information or have any questions, please contact Angela Plautz at (867) 766-7461 or aplautz@mvlwb.com.

Yours sincerely,



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