

Phyllis Beaulieu

From: PETER.MACKENZIE@forces.gc.ca
Sent: Friday, August 26, 2011 12:27 PM
To: licensing@nunavutwaterboard.org
Cc: NADINE.TISCHHAUSER@forces.gc.ca
Subject: Additional comments on the Draft Nunavut Waters Regulations - National Defence

Dear Ms. Beaulieu,

Additional comments on the Draft Nunavut Waters Regulations are attached in letter format. As noted below, the Department of National Defence will not be submitting a written statement as intervention or attend the Hearings. If you have any questions regarding our response or require clarification, please do not hesitate to contact the undersigned at your convenience.

Best regards,

Peter MacKenzie

Peter M. MacKenzie, P.Eng.

Contaminated Sites Manager | Gestionnaire des sites contaminés

> Director General Environment | Directeur Général Environnement

> National Defence | Défense nationale

Peter.MacKenzie@forces.gc.ca

> Telephone | Téléphone 613-992-3054

> Facsimile | Télécopieur 613-992-9422

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26 Aug 2011

Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU X0B 1J0

Attn: Phyllis Beaulieu, Manager of Licensing

Via email: licensing@nunavutwaterboard.org

The draft Nunavut Waters Regulations, made pursuant to the Nunavut Waters and Nunavut Surface Rights Tribunal Act, were made available for public comment between February and May 2011. It is understood that the object of the regulations is to "provide for the conservation and utilization of waters in Nunavut" that "will provide the optimum benefit from those waters". It is also understood that the intent of the regulations is to be protective of all underground and surface waters within the Nunavut Territory (National Parks excepted) including those waters that are used outside of a licensing requirement.

During the commenting period, several textual issues and ambiguities were brought to the attention of the Nunavut Water Board. These comments were passed onto to Aboriginal Affairs and Northern Development Canada (AANDC, formerly Indian and Northern Affairs Canada, INAC) who were responsible for drafting these regulations. Several issues have been addressed by AANDC however some of the raised concerns were not addressed, or were addressed inadequately

and it is probable that the draft regulations will continue to exhibit some ambiguities which may result in inconsistent interpretation of the regulations (from the point of view of both the inspectors and the proponents) which could lead to difficulties in the application and enforcement of these regulations.

The Department of National Defence (DND) supports the intent of the draft Nunavut Waters Regulations however, the ambiguities must be addressed so that the regulations are clear and concise, and applied in a consistent manner and not left up to the interpretation of each inspector.

Please note that DND does not wish to provide a written statement as intervention of the draft regulations however it is felt that the following issues should be revisited before the regulations are finalized:

* Ambiguities in sections 4 and 5, namely the terms "substantially", "adversely" and "extent practicable", must be clearly defined in the Regulations (verses in proposed guidance documents) to allow for the consistent application of the regulations and to avoid potential misinterpretations of the regulations by both the proponents and inspection staff.

* An application for approval of an unlicensed use of waters or deposit of waste is valid for one year. It has been indicated that approvals exceeding one year (or for multi year activities) will require a license. The draft regulations should permit minor extensions (30-90 days) to allow for the completion of any necessary activities such as site restoration. In addition, the draft regulations are silent on the possibility of renewing one-year approvals; it should be confirmed that one-year approvals may be renewed through application.

* The draft regulations require the site to be restored prior to the closure or abandonment of the undertaking. The regulations should state that "the site must be restored immediately following the closure of the undertaking".

* The regulations require the proponents to maintain records of the concentrations of substance(s) "that have the effect of making the deposit waste". The regulations should indicate a standard set of parameters that must be analysed prior to, or during discharge of the waste. For example, grey or black water may have significant concentrations of various contaminants however only fecal coliforms may be measured.

* As noted in Schedule 3, any deposit of sewage to a sump does not require a license. The regulations and Act are silent on the soil permeability and location of these sumps. Clarification on permeability, sump construction and separation (set-back) distance should be noted in the regulations.

As previously noted, DND supports the intent of the draft regulations provided the ambiguities have been addressed. Please note that DND will not be submitting a written statement as intervention or be participating in the Hearings.

If you have any questions regarding our response or require clarification, please do not hesitate to contact our office at your convenience.