May 20, 2011
DND Submission

Comments on the Draft *Nunavut Waters Regulations*

General comments:

The draft regulation pertains to the "unlicensed" (but authorized) use of water and deposit of waste AND the licensed use of water and deposit of waste. These should be in separate regulations to reduce confusion.

The regulations pertain to an application for approval of "unlicensed" use of water or deposit of waste. Will the approval of unlicensed use of water or deposit of waste be considered a licence?

Specific comments:

Section	Item	Issue
1.	In the draft regulation, the term "undertaking is defined as "an appurtenant undertaking, or an undertaking in relation to a use of waters or deposit of waste for which a licence is not required, of a type set out in Schedule 1."	In the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, "appurtenant undertaking" is defined as "an undertaking in relation to which a use of waters or a deposit of waste is permitted by a licence". The same or a complimentary definition of undertaking or appurtenant undertaking should be used in the regulation. It appears that the same term is used to describe a situation where a licence is required and also one where a licence is not required.
2(a)	"… type A or B licence…"	Should state where type A and B licences are defined (ie in the Act).
2(a) and 9(1)	"…for the purposes of section 13.7.1 of the Agreement;"	The "Agreement" should be defined in section 1. It is assumed that "Agreement" in this situation pertains to the Nunavut Land Claims Agreement.
2(b)	"…an unlicensed use of waters or deposit of waste described in section 4 or 5 is not authorized by these Regulations unless the Board has approved the use or deposit."	In section 4 and 5, licences are not required for use of water or for deposit of waste generally if they do not create an adverse affect however they still require an approval (authorization). The statement in section 2(b) is confusing. Perhaps the term "unlicensed" is causing the confusion and another term should be used instead. Suggestion, "the use of waters or deposit of waste that does not require a licence must still be approved by the Board."
4(3)(b)	"…the site must be	In situations where the "undertaking" has

	restored…"	improved the condition of the bed or banks as part of water use, there should be some flexibility to allow the improvements to remain (for example, the addition of rip-rap).
4(1)(b) & (c) and 5(1)(b)	"…would not substantially affect the quality…"	Who is responsible to determine if the quality (or quantity) is affected? Is this the responsibility of the proponent or the Nunavut government? What is the criterion (fish kill)?
5(4)(a)	"…no waste must not be …"	The word "no" is redundant. The sentence should read "waste must not be…"
5(4)(b)	"…the waste must not contain more than 15 mg/L of petroleum…"	Is there a minimum quantity testing requirement (for example, one analysis per 1000 L of discharge); is there a minimum laboratory testing requirement (ie only results from CAEAL certified labs will be accepted) or will results from analytical field kits be accepted; are petroleum products the only contaminant of concern (are drilling fluids that have a high suspended solids content a concern; PCBs; heavy metals; chlorinated solvents; etc)?
5(4)(c) and 4(3)(b)	"…to the extent practicable…"	How is "extent practicable" defined? Is this based on a financial limit (ie. upset dollar limit or a percentage of the undertaking), a physical limit (ie. heavy equipment is required to restore but the site is not accessible), or some other parameter. This should be clearly defined or the statement should be removed.
5(5)	"…a site need not be restored prior to…"	If the site becomes licensed before the end of the period authorized for an 'unlicensed deposit', the site does not have to be restored (the requirement to restore the site must therefore be a requirement of the licence). If a site becomes licensed, then this regulation no longer applies. If the site does not have to be restored, it should at least be stabilized in order to reduce the potential for environmental damage as a result of the undertaking.
5(6)	"A deposit of waste without a licence is authorized for a	This statement is confusing. Since the clause is under Unlicensed Waste

	period of one year after the day on which the Board approves the application for the approval of the deposit."	Deposit, perhaps the statement could be revised to "the deposit of waste is authorized for a period of one year after the day the Board approves the application."
6(1)(a)(iv)	"the concentration …that has the effect of making the deposit waste"	Does this include grey and black water discharges? The regulation does not apply to domestic activities, however if they are part of an industrial undertaking, do they then apply?
6(1)(c)	"…and supporting photographs of the restoration…".	The restoration required following use of water/deposit of waste that does not require a licence has to be supported with photographs where the restoration following a licensed activity does not require photographs. This requirement should be applied consistently.
7(1)(a) and (b)	"the use is of a type set out in column 2 of Schedule 2 and satisfies a criterion set out in column 4 in respect of an undertaking set out in column 1…"	Is there anyway that this statement could be simplified and/or clarified?
10(1)	"…the amount of security required…by an applicant for a licence…"	There is a requirement to have a security in place to cover the cost of site restoration in case the licensee defaults on their responsibility to restore the site. There does not appear to be a security required for 'unlicensed' use/deposit. The requirement of securities should be based on the type of undertaking (ie. the level of risk associated with the undertaking).
12(1)	"…the fee payable by a licensee…"	Fees are payable for (a) agriculture, (b) industrial/mining, and (c) power undertaking. There should be an "other" category to capture undertakings that do not fall into these categories. It should be clear that fees are not required for approval of 'unlicensed' use of water/deposit of waste.
12(3)	"…to be total watercourse flow…"	Does this mean that 100% of the flow from the watercourse is being used for the undertaking? There should be a limit on the volume of water that can be extracted from a watercourse (ex. not to exceed 20% of the total watercourse flow, etc).

		Removal of large volumes from a watercourse could have significant adverse affects downstream (ie due to reduced aggregate flows).
12(5)	'…in respect of a diversion of waters…"	Watercourse alterations or diversions should only be permissible under exceptional circumstances and should be screened for risk.
13(a)(i)	"the quantity of water…used each day"	How should the volumes be calculated? Based on timed flow over a temporary weir; a metered pump; a guestimate/ROM? The minimum acceptable method of estimating should be stated.
13(a)(ii)	"the quantity of waste…"	The location of the deposit should also be included. Deposits of waste into small streams that have a reduced capacity to assimilate waste and have small mixing zones should not be permitted.
13(a)(iii) and (iv)	"the type of waste…" and "the concentration of the substance…"	Additional information is required. What type of wastes will/will not be permitted; is there a concentration limit for wastes (other than petroleum)?
13(c)	"keep the books and records…after the expiry…"	After the undertaking has been completed, where should the records be stored / kept? Could the proponent send the NWB electronic copies of all records for safekeeping?
14(1) and 14(4)	"…in a form acceptable to the Board..."	The NWB should provide a template for an annual report to ensure that their minimum acceptance is applied consistently.
14(d)	"the concentration of the substance…"	Is grey or black water considered waste? Is cooling waters or water used for flushing pipes or rinsing equipment considered waste?
15(1)	"…must be in printed or electronic form…"	This is not a requirement of the applicant but is the responsibility of the NWB. This paragraph should be rewritten.
16(1)	"…a person who reports a deposit of waste…"	This section should reflect the wording from the Act. The Act refers to the person who "owns or has charge of" or "who caused or contributed to the deposit" must report it to an inspector. The Regulations do not reflect the same meaning, simply "a person who reports a deposit of waste".

		A timeframe should be indicated. The Act refers to a timeframe "without delay". This should be included in the regulation or a maximum upset timeframe should be indicated (ie no later than 24 hours following the deposit or knowledge of the deposit…).
16(1)(a) and (2)	"to an inspector…"	An "inspector" was not defined in the Act or as part of these regulations. The type of inspector should be clarified, for example, is this a territorial inspector, a federal (ie. INAC, EC, etc) inspector, a building / construction inspector, etc.