

- 3.2 **Precedent.** This Agreement is not to be construed as a precedent for any other activities of DND, Canada or any third party. Nothing in this Agreement shall be interpreted or used to define the rights of the Parties, Canada or any third party in relation to any matter under the NLCA or to interpret any Article of the NLCA except for the purpose of this Agreement.;
- 3.3 **Urgency.** The Parties mutually agree to recognize the urgency of the matters dealt with in this Agreement and to perform all required actions as expeditiously as possible.
- 3.4 **Nunavut Land Claims Agreement.** The Parties recognize and acknowledge their respective obligations to comply with the NLCA in connection with all Work.
- 3.5 **Inuit Owned Lands.** All use of and access to Inuit Owned lands by DND, Contractors and subcontractors for the purposes of the Work is subject to the NLCA and the Rules, to the extent that the Rules are not inconsistent with the NCLA.
- 3.6 **Clean-up Schedule.** The commencement and completion of the Work will take place in accordance with the attached Appendix A. The Parties will use their best efforts to adhere to Appendix A.
- 4.0 **Steering Committee**
- 4.1 There shall, during the duration of this Agreement, be a Steering Committee to monitor progress, develop recommendations and suggest alternative solutions for achieving the commitments set forth in this Agreement by:
- (a) reviewing progress in achieving the commitments set out in this Agreement;
 - (b) ensuring that any perceived deficiencies with respect to the Work or to commitments under this Agreement discussed and, where agreed, are expeditiously acted upon;
 - (c) considering other items of mutual concern, as appropriate;

(d) requesting the Environmental Working Group (EWG), established in accordance with section 7 of this Agreement, to undertake additional study and formulate recommendations to the Steering Committee.

4.2 The Steering Committee shall consist of four members, two to be named by DND and two to be named by NTI. It shall meet at least twice a year and at the request of any Party at mutually agreed upon times and locations. In order to place an item in the agenda, a Party shall provide that item to the other Party not less than ten working days before each scheduled meeting. The Steering Committee shall operate on the basis of unanimous agreement.

4.3 Recommendations agreed to by a majority of the members of the EWG will be incorporated into the site specific plan referred to in section 23 of this Agreement or into the post-clean-up methodology as the case may be. Where either DND or NTI disagree with the EWG recommendations, it will raise the issue at the Steering Committee for discussion in accordance with clause 4.4. If the Environmental Working Group is deadlocked (ie 2-2) on any issue, including scoring of the risk assessment matrix and landfill remediation, the Steering Committee will discuss the situation and attempt, in good faith, to arrive at a consensus. The Parties pursuant to clause 4.5 may, where appropriate, seek independent advice.

4.4 Should unanimous agreement not be reached at the Steering Committee the following approach will be used:

(a) Prior to Clean-up Commencing - the clean-up will not commence until the issue is resolved to the satisfaction of both Parties.

(b) Clean-up has commenced - the clean-up will continue in accordance with the site specific clean-up plan. If the issue is not included in the site specific plan then DND will proceed based on the advice provided by its consultants. DND and NTI will continue to attempt to arrive at a consensus.

In either event, both Parties continue to have the option of involving the provisions of section 5 of this Agreement if unanimous agreement cannot be reached. If unanimous agreement is reached at a later date or there is an arbitration decision which differs from the actions taken by DND, the new decision will be implemented.

4.5 The Steering Committee shall, with the agreement of the members, acting reasonably, invite representatives of Government departments, Inuit organizations, non-governmental organizations, Contractors, Subcontractors and others to provide advice or information as required. If requested by the other Party, DND and NTI agree to provide each other with all relevant scientific and technical information, with the exception of:

- advice to Ministers or Inuit Boards of Directors
- negotiating strategies
- commercially confidential third Party information
- personal information

4.6 The Parties each shall be responsible for their respective costs associated with participating in Steering Committee meetings.

5.0 ARBITRATION

5.1 If DND and NTI disagree on any question of fact or mixed question of law and fact related to the interpretation, implementation or operation of this Agreement, with the exception of any matter within the jurisdiction of the Arbitration Board under the NLCA, either party may by written demand refer the dispute to arbitration in accordance with the following provisions.

5.2 An arbitration Panel consisting of a single arbitrator who both Parties agree is qualified to arbitrate the question in dispute will render a decision on the dispute. If DND and NTI cannot agree on a single arbitrator then a decision will be rendered by an Arbitration Panel consisting of three similarly qualified arbitrators, one of whom shall be chosen by NTI, one by DND and the third by the two so chosen, which third arbitrator shall be the chairperson. If within fifteen days of having received a written demand, or such extended time as the parties agree, a party fails to either agree to a single arbitrator or to appoint an arbitrator, or if the two arbitrators appointed by the parties do not agree upon the third arbitrator, then upon written application by either party such third arbitrator shall be appointed by the superior court having jurisdiction in the NSA.

- 5.3 The arbitration proceedings shall be held within thirty days following the appointment of the Arbitration Panel in a location agreed upon by the Parties or, if the Parties are unable to agree, as determined by the arbitration panel. The timing for the panel hearing may be extended by mutual consent of the Parties, not unreasonably being withheld.
- 5.4 The arbitration panel shall have jurisdiction to determine all questions of fact, questions of mixed law and fact and to make an award, including interim relief, payment of interest, and costs. If an arbitration panel makes no decision as to costs, each party shall bear its own costs and an equal share of the other costs of the arbitration, including the remuneration and expenses of the arbitration panel.
- 5.5 The Arbitration Panel shall render a decision, in writing, within thirty days of the completion of the arbitration hearing and state the reasons on which it is based. The decision is final and binding and is not subject to appeal. Pursuant to section 17(3)(b) of the *Federal Court Act*, the Parties agree that the Federal Court Trial Division shall have jurisdiction to review the decision of an arbitration panel on any grounds set out in section 18.1(4) of the *Federal Court Act*.
- 5.6 Where a party to an arbitration fails to comply with any of the terms of the decision of the arbitration panel, any party to the arbitration may file in the office of the Registrar of the superior court having jurisdiction in the NSA, a copy of the decision in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court, and is enforceable as such.
- 5.7 The territorial *Arbitration Act* shall apply in any arbitration under this Agreement to the extent that it is not inconsistent with this Agreement, unless otherwise agreed by the parties.
- 5.8 The arbitration panel may, on application, allow any to participate in an arbitration as an intervenor, if in the arbitration panel's opinion the interest of that person may be directly affected by the arbitration, and on such terms as the arbitration panel in its discretion may order.
- 5.9 Unless the parties otherwise agree, the proceedings and Board's decision shall be made public.

6.0 Environmental Risk Assessment Matrix

- 6.1 All landfills will be scored by the EWG in accordance with the Environmental Risk Assessment Matrix as set out in Appendix B of this Agreement. The construction of this matrix takes into account two conservative assumptions:
- The contents of the landfills are unknown and all potential contaminants (ie substances typically used at DEW Line sites) may be present in the landfill
 - If a contaminant comes into contact with receptors, it could have an adverse impact on those receptors regardless of the exposure duration or concentration
- 6.2 Landfills scoring 105 points or more are classified as potentially high environmental risk (Class A) and will be excavated. Landfills with a score of 100-104 points will be considered on a case by case basis to determine whether they should be excavated or considered as Class B landfills.
- 6.3 Landfills with a score in the range 75 to 99 points are classified as moderate environmental risk (Class B). An engineered leachate containment system will be provided for these landfills to mitigate against potential environmental risks. The landfill engineers under contract to DCL will take into consideration any suggestion of the EWG regarding the design of the leachate containment facility. In specific cases where an engineered leachate containment system cannot be constructed, the EWG will recommend whether complete excavation or partial excavation with a leachate containment system is required.
- 6.4 Landfills with scores of 75 or less are classified as low environmental risk (Class C). The remediation approach for these landfills will be the placement of an engineered cover following collecting, sorting, and appropriate disposal of debris where it may impact on the integrity of the landfill. Hazardous debris will be removed and disposed of in accordance with federal regulations. Generally, the final thickness of cover material will be approximately 0.75 metres, but may vary depending on site specific conditions.
- 6.5 Scores that fall within plus or minus five points of 75 points will be considered on a case by case basis.

6.6 The scoring of Category C: Receptors of the matrix will take into account local/traditional knowledge in accordance with the procedures set out in Section 8 of this Agreement. The primary focus for the collection of local/traditional knowledge will be on the local community and an Inuit representative who is familiar with the DEW site under assessment.

6.7 The scoring of the landfills will take place before the clean-up at that DEW site commences and the site specific clean-up plan is finalized.

7.0 Environmental Working Group

7.1 An Environmental Working Group (EWG) will be established. The EWG will consist of four members, two chosen by each of the Parties. The members will be qualified engineers and/or scientists with expertise in environmental remediation and clean-up in northern climates.

7.2 The EWG will, for each of the landfills prior to the clean-up of that site, be responsible for the scoring of the risk assessment matrix, interpreting the results and recommending a remediation solution in accordance with this Agreement. If a majority of the members of the EWG are in agreement with the EWG recommendations then DND will include these recommendations in its site specific plans which are referred to in section 23 of this Agreement. If the EWG is deadlocked then the issue will be referred to the Steering Committee as per section 4.3 of this Agreement.

7.3 During the monitoring period, the EWG will also examine the results of the monitoring program in accordance with the methodology set out in section 20 of this Agreement and report to the Steering Committee on the results of their investigation. Should changes to the monitoring plan and/or additional remediation be required, the EWG will make recommendations to the Steering Committee on what action should be taken as per section 4.3 of this Agreement.

7.4 The EWG will go on-site during the pre-cleanup delineation phase of the project to assemble information required, including local/traditional knowledge as per section 8 of this Agreement, to score the risk assessment matrix. DND will contribute \$10,000 per site to NTI to defray the cost incurred by its EWG members and a community representative selected by the relevant RIA (NTI Representative). DND will also provide the NTI representative transportation