

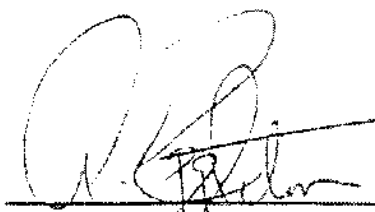
### **Appendix III**

DND-NTI Cooperation Agreement

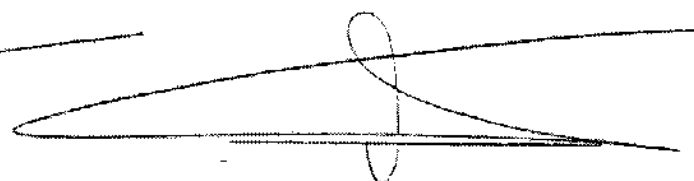
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AGREEMENT  
BETWEEN  
NUNAVUT TUNNGAVIK INCORPORATED  
AND  
HER MAJESTY IN THE RIGHT OF CANADA  
AS REPRESENTED BY  
THE MINISTER OF NATIONAL DEFENCE  
FOR THE CLEAN-UP AND RESTORATION OF  
DISTANT EARLY WARNING SITES  
WITHIN THE NUNAVUT SETTLEMENT AREA

(Environmental Provisions)



Arthur C. Eggleston  
Minister of National Defence



James Eetoolok  
1<sup>st</sup> Vice President  
Nunavut Tunngavik Incorporated

Dated

*1 Sep 98*

Dated

*1 Sep 98*

AGIKATIGEGUTAORYOK

UGUNAGA

NUNAVUT TUNNGAVITKUN TIMIKUTIGIYANIN

UVALO

KOENMIN IHUMAKHUTIVLOGIN KANATAMI

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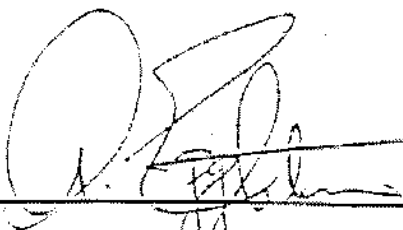
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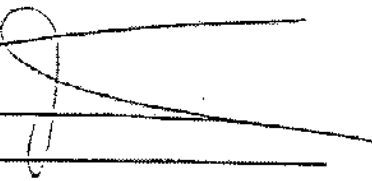
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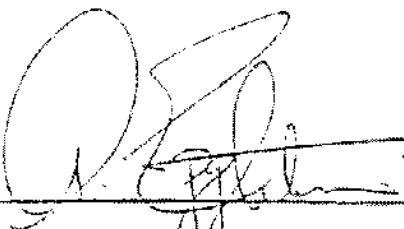
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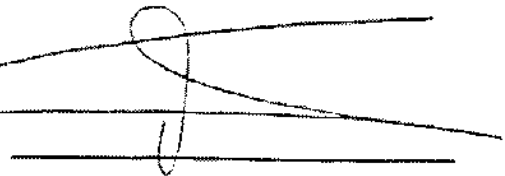
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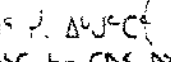



ARTHUR C. EGGLETON  
MINISTA OYOK AGUYAKTILIKIYINI  
KANATAOM GAVAMAENI  
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## **PREAMBLE**

WHEREAS the Government of Canada (Canada) has modernized the air defences of Canada through a joint USA/Canada project referred to as the North American Air Defence Modernization Project (NAADM);

AND WHEREAS NAADM includes the decommissioning of some of the Distant Early Warning (DEW Line) radar sites and the conversion of others to North Warning System (NWS) radar sites;

AND WHEREAS fifteen DEW Line sites are located on Department of National Defence (DND) reserves within the Nunavut Settlement Area (NSA);

AND WHEREAS DND wishes to undertake an environmental clean-up of the DEW Line sites, facilities and associated areas;

AND WHEREAS the Inuit and the Federal Government have an interest in all activities that occur within the NSA, including, but not limited to, protecting the ecosystem integrity and the existing and future well-being of the residents and communities of the NSA and increasing the participation of Inuit and Inuit Firms in business and employment opportunities in the NSA;

AND WHEREAS DND and NTI are voluntarily entering into this Agreement to establish a framework for the decommissioning, remediation and restoration of the DEW Line sites in the NSA;

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree as follows:

### **1.0 DEFINITIONS**

Debris means hazardous and non-hazardous materials of non-natural origin existing on the surface, or visible and partially embedded within one metre of the surface or within two metres of the surface of any water body at low tide and any structures scheduled for demolition

DEW Line sites means the Distant Early Warning Sites listed in paragraph 3.1 below;

DEW Line Clean-up  
Environmental Provisions

**DCL** means Defence Construction (1951) Limited the designated contracting agent for contracting for the Department of National Defence for the Dew Line Clean-up;

**DND** means the Crown in the right of Canada represented by the Minister of National Defence or his delegate

**Engineered Landfill** means a landfill professionally designed to permanently isolate the contents of the landfill from contact with the environment.

**Hazardous materials or substances** means all materials or substances designated as hazardous under territorial or federal legislation at the time of the clean-up of a particular landfill.

**Inuit** has the same meaning as in the NLCA;

**Inuit Owned Lands** has the same meaning as in the NLCA;

**Landfill** means any area where a concentration of non-hazardous and/or hazardous substances or materials or Debris have been buried;

**Minister of National Defence** means the Minister of National Defence or his designate

**Nunavut Settlement Area** has the same meaning as in the NLCA;

**Rules** means the *Rules and Procedures for the Management of Inuit Owned Lands* adopted by NTI, as amended from time to time,;

**Parties** means NTI and DND;

**Regional Inuit Associations (RIA)** means the Qikiqtani Inuit Association, the Kivalliq Inuit Association and the Kitikmeot Inuit Association;

**Relevant RIA** means the RIA in the region in which a DEW Line site is located;

**Work** means all the materials, equipment, goods, services, labour, matters and things done or furnished or required to be done or furnished to perform any DEW Line site decommissioning, remediation or restoration activity.

## 2.0 OBJECTIVES

- 2.1 The objectives of this Agreement are to establish a broad environmental framework for participation of the Inuit in the clean-up of the DEW Line Sites in the NSA and to achieve cost effective and an environmentally sound DEW Line clean-up as described herein.
- 2.2 DND and NTI will enter into a corollary agreement with respect to economic benefits for the Inuit and Inuit firms including provisions for training (this agreement may or may not involve regional negotiations).

## 3.0 GENERAL

- 3.1 **Scope.** This Agreement relates to the decommissioning, remediation, restoration and related activities of the following DEW Line sites:

PIN 2 - Cape Young  
PIN 3 - Lady Franklin Point  
PIN 4 - Byron Bay  
CAM M - Cambridge Bay  
CAM 1 - Jenny Lind Island  
CAM 2 - Gladman Point  
CAM 3 - Shepherd Bay  
CAM 4 - Pelly Bay  
CAM 5 - Mackar Inlet  
FOX M - Hall Beach  
FOX 2 - Longstaff Bluff  
FOX 3 - Dewar Lakes  
FOX 4 - Cape Hooper\*  
FOX 5 - Broughton Island  
DYE M - Cape Dyer

\* Prior to the signing of this Agreement the clean-up of Cape Hooper (FOX 4) had already begun under a separate set of understandings. Therefore only the post clean-up provisions of this Agreement will apply to this site



- 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 judgement 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

costs whenever the NTI representatives are travelling to a site or to a community with the DND representatives on a DND charter. DND will also provide meals and accommodation for the NTI representative while at the site.

- 7.5 The EWG will also act as a resource to the Steering Committee and will upon request from the Steering Committee investigate certain matters and produce reports or studies for consideration by the Steering Committee. Both Parties agree to cover the costs of their members of the EWG to undertake such work.

#### 8.0 Local/Traditional Knowledge

- 8.1 Traditional and local knowledge for use in the scoring of the risk assessment matrix will be collected during the Pre-Cleanup Delineation phase of the DEW Line clean-up project.
- 8.2 An Inuit representative familiar with the DEW site and traditional use of the area around the site will be chosen by the relevant Regional Inuit Association to be on site during the pre-construction delineation phase of a site clean-up. The Inuit representative will work closely with the EWG to identify Inuit use of the area, wildlife patterns, and past events and occurrences that may have impacted on landfills (i.e. dumping, hazardous waste storage, natural occurrences) in order to assist in the scoring of the matrix.
- 8.3 DND and NTI will attempt to establish a community DEW Line Clean-up Committee which would facilitate the flow of local knowledge to the EWG prior to, and during, the site visit.
- 8.4 The EWG will visit the local community (ies) most affected by the DEW site. The EWG will conduct one-on-one interviews with a number of residents and will also meet with the Hamlet Administration Officer and/or the Hamlet Mayor, the local Hunters and Trappers Association, and relevant community organizations to obtain information concerning the traditional use of the area by the community. The Community Land and Resource Committee (CLARC) will be consulted if Inuit Owned Land is affected in any way.
- 8.5 In anticipation of these community consultations, DND, in consultation with NTI will prepare an information package in English and the relevant Inuit language for

use in the community consultations. The package will include maps of the site and the surrounding area along with sample questions (see Appendix D) that would facilitate discussion.

- 8.6 DND will provide NTI with at least six months notice regarding the site visit in a given season. Six weeks notice will be provided regarding the dates for the community visit. DND will attempt to arrange the timing for the community consultation to avoid harvest time when members of the community might be on the land. NTI in conjunction with the EWG will arrange the interviews with the various community associations and individuals.
- 8.7 The EWG will document all information collected during the community consultations. This information will be provided to DND, NTI, the relevant RIA and the host community.
- 8.8 All information collected from the interviews will be considered during the matrix scoring and will be given equal consideration with conventional scientific knowledge collected during the site visits.
- 8.9 Prior to the actual clean-up, DND will conduct a community information session to inform the residents of the scope of the Work and other relevant facts. In the case of CAM 4, there will be a community information session during the summer of 1998 at the option of the RIA. For Fox 5, in addition to this community information session, the EWG will be consulting the community of Broughton Island on FOX-5 as part of its work on scoring landfill evaluation matrices, during the summer of 1998 and DND will provide a limited public information session at that time.
- 9.0 **CEPA Soils**
- 9.1 Soils at concentrations exceeding federal regulations (referred to herein as "CEPA" soils) will be removed from the site and disposed of in a licenced facility in accordance with those federal regulations.
- 10.0 **Tier II Soils**
- 10.1 Tier II soils are defined in Appendix E of this Agreement.



10.2 Tier II soils will be excavated and placed in an engineered, lined, containment facility (Tier II Disposal Facility). After excavation, the area will be backfilled with sufficient clean fill to provide an effective layer over any remaining Tier I soils and to meet the requirement of clause 22 of this Agreement. A schematic of a Tier II Disposal facility is presented in Appendix K. Tier II soils may also be placed in a similarly engineered cell of a larger landfill. The location of the Tier II Disposal Facility will be selected in order to minimize potential environmental impact in a cost-effective manner. In some cases Tier II soils may be transported from one DEW site to another depending on soil volumes and project economics.

10.3 Confirmatory testing will be conducted in accordance with the methodology outlined in section 13 of this Agreement.

#### 11.0 Tier I Soils

11.1 Tier I Soils are defined in Appendix E of this Agreement.

11.2 Tier I soils will be excavated to a depth of to 30 cm if the soil is located on a flat or gently sloping area such as a gravel pad unless delineation testing indicates a lessor depth of contamination. In such a case, a suitable safety margin will be excavated. Where Tier I soils are located on slopes greater than 3:1 (horizontal:vertical), the contaminated soils will be excavated to a depth of up to 60 cm. After excavation, the area will be backfilled with sufficient clean fill to provide an effective layer over any remaining Tier I soils and to meet the requirement of clause 22 of this Agreement.

11.3 Tier I soils will be placed in a professionally engineered landfill where they may be used as intermediate fill.

11.4 During the pre clean-up delineation phase prior to going to tender for the clean-up, testing to determine the presence or absence of Tier II contaminated soil below the Tier I soils will be conducted.

#### 12.0 Hydrocarbon Soils

12.1 Hydrocarbon contamination will be based initially on the measurement of Total

Petroleum Hydrocarbons (TPH) where the TPH value is greater than or equal to 2500 ppm. Should the soils contain Tier I or Tier II contamination, they will be treated in accordance with the relevant sections of this Agreement. These hydrocarbon areas will be identified on site as part of the pre-construction delineation testing.

- 12.2 Each contaminated area will be evaluated qualitatively by the EWG using the checklist outlined in Appendix J of this Agreement.
- 12.3 Where remediation is required, one of the following options will be used:
- aerating the hydrocarbon contaminated soil in place to reduce hydrocarbon contaminant concentrations
  - use of hydrocarbon contaminated soil as intermediate fill within an engineered landfill
  - landfilling in a Tier II Disposal facility
  - bioremediation using a landfarming or bio-pile processes
  - soil washing
  - other equivalent technologies recommended by the EWG
- 12.4 Based on site specific conditions, the EWG will recommend the most appropriate of the remediation options outlined in clause 12.3 in accordance with section 4.3 of this Agreement. The appropriateness of the options will take into consideration the environmental sensitivity of the area. Factors which will be considered in the selection of the method are:
- type of contaminant (ie fuel or lubricating oil)
  - total volume of hydrocarbon contaminated soils on site (mobilization costs, ability to treat the soil)
  - concentration of hydrocarbons within the soil (effectiveness of treatment process)
  - type of soil
- 13.0 **Pre Clean-up Delineation and Confirmatory Soil Testing**
- 13.1 A comprehensive pre clean-up delineation program will be designed to ensure that all contaminated soil and contaminated building material will be identified. DND

will investigate areas of concern identified by NTI and/or its representatives who will be on-site during the delineation work. Risk assessment consideration will be given to soils that act as sources of contaminants to nearby aquatic environments even if the contaminants are below the relevant DCC criteria. The method of delineation will follow the grid as set out in Appendix F of this Agreement.

- 13.2 Confirmatory testing of contaminated areas, other than Tier I soils, will be conducted after contaminated soils have been excavated. Confirmatory testing will be conducted in accordance with the protocol outlined in Appendix F of this Agreement.
- 13.3 Should there be evidence to suggest that some contaminated areas were missed during the pre clean-up delineation work, these areas will be investigated in accordance with the pre clean-up delineation methodology.
- 13.4 During the confirmatory testing phase, NTI may assign a qualified observer to the site.
- 13.5 Appropriate quality assurance measures acceptable to the EWG will be taken to ensure the accuracy of all analytical work in the field or in laboratories.

#### **14.0 Debris**

- 14.1 Debris will be collected and sorted into hazardous and non-hazardous components. Hazardous debris will be disposed of in accordance with Federal regulations. Non-hazardous debris will be buried in a professionally engineered landfill, provided there is a suitable location and sufficient gravel is available. Appendix C contains additional details concerning the destination of collected debris.
- 14.2 All debris which is attributable to the operation of any DEW site and is within two metres of the surface at low tide or within two metres of the surface of an inland water body will be removed by DND.

#### **15.0 Off Site Contamination and Debris**

- 15.1 Where there is reasonable evidence of additional off site contamination or debris

which, subject to clause 15.2, is attributable to the operation of a nearby DEW site, DND will undertake testing to determine the extent of the contamination in consultation with NTI and remediate the site in accordance with the relevant sections of this Agreement.

15.2 Should the evidence clearly demonstrate that other individuals or organizations have contributed significantly to the contamination or debris, then NTI and DND will endeavour to obtain the third Party (ies) agreement to contribute its pro-rated share of the investigation and clean-up costs before the investigation and clean-up commences. If the third party does not agree to pay their share of the costs, DND has the option, where practical, to clean up its share of the contamination, or in the alternative, waiting until there is third party agreement regarding payment of the investigation and clean-up costs. The investigation and clean-up will be in accordance with the clean-up protocol outlined in this Agreement.

15.3 NTI will endeavour to identify areas of concern prior to the delineation phase of the clean-up.

#### **16.0 PCBs in Paint**

16.1 PCBs in paint will be treated in accordance with applicable federal regulations. Changes to these regulations will be dealt with in accordance with section 25.1 of this Agreement.

#### **17.0 Materials Containing Lead-based Paints**

17.1 Materials containing lead-based paints will be placed in a professionally engineered landfill. Should regulations or guidelines be issued which direct otherwise, the implementation of this change will be dealt with in accordance section 25.1 of this Agreement.

#### **18.0 Barrels**

18.1 The testing and disposal of POL tank sludge, waste oil, petroleum products, antifreezing agents, solvents and barrels will be handled in accordance with the criteria as set out in Appendix G.

**19.0 Borrow Material**

- 19.1 DND will attempt to minimize new excavation of borrow materials required for the clean-up activities. Where possible, existing sources of borrow material will be used. All borrow areas will be regraded to match the surrounding topography.

**20.0 Monitoring Program**

- 20.1 The monitoring program will identify an actual or potential landfill failure. Remedial action will be undertaken if leachate is present at levels greater than the site specific baseline concentrations at the time of the landfill completion. Action taken as result of the monitoring program will ensure the integrity of the landfills and thereby the health of the Inuit is protected on a continuing basis.
- 20.2 Following the completion of the clean-up for a site, DND will commence a monitoring program in accordance with Appendix H of this Agreement.
- 20.3 The monitoring program will have three phases. The objective of each phase are identified in Appendix H.
- 20.4 Monitoring results will be communicated to both Parties in the form of a comprehensive report.

**21.0 Research Proposals**

- 21.1 NTI, on behalf of communities, may raise at the Steering Committee, items, including the need for hydrographic mapping, which could involve the requirement for research and investigation. These proposals will be discussed and evaluated at the Steering Committee. If the Steering Committee decides that the proposals are consistent with the objective of the clean-up which is to protect the environment from contaminants entering the food chain or involve direct DEW site related impacts which could cause significant economic impact, DND will fund the agreed upon research activities.
- 21.2 Where the proposals are broader in nature and not solely restricted to DND DEW

site activities, DND will support NTI in seeking funding under other Government programs and/or initiatives and may contribute funding to the approved proposals.

- 21.3 Involvement of the Inuit in the research activities including training and technology transfer will be dealt with in an agreement dealing with economic provisions.

## **22.0 Site Restoration**

- 22.1 All sites will be regraded to the extent possible to conform to the natural contours. The regrading will pay particular attention to hydrocarbon stained areas and wherever feasible these areas will be regraded so as to improve the aesthetics of the stained area.

## **23.0 Site Specific Clean-up Plan**

- 23.1 DND will provide NTI with a site specific clean-up plan six months in advance of the clean-up of a particular site. NTI will review the plan to satisfy itself that the plan is in accordance with the requirements as set out in this Agreement. Any items of concern to NTI will be referred to the Steering Committee for resolution in accordance with section 4.3 of the Agreement prior to the issuance of any requests for bids by DCL. DCL, as the representative of the project proponent (DND), will be responsible for preparing all necessary submissions to obtain regulatory approval to proceed with the clean-up activity.

## **24.0 Liability and Indemnification**

- 24.1 DND acknowledges and agrees that it has continuing responsibility and liability for the integrity of all landfills remaining on site. DND agrees that should there be evidence of potential or actual failure of a landfill, it will investigate the situation pursuant to the monitoring provisions of this Agreement.
- 24.2 Should there be evidence of contamination at the DEW Line site which exceeds the protocol as set out in this Agreement at the time of the signing of this Agreement and which cannot be attributed to a third Party then DND will undertake the clean-up.

- 24.3 DND agrees that nothing in this Agreement shall relieve the Crown or its agents either at present or in the future from complying with all applicable federal laws of general application. Changes to territorial law will be referred to the EWG which will make recommendations to the Steering Committee concerning the relevance of these changes to the clean-up.
- 24.4 DND agrees that it will be a condition of any sale or transfer of any of the lands comprising the DEW Line sites that the purchaser must assume DND's obligations under this Agreement with respect to the lands sold or transferred. It will also be a further condition of any such sale or transfer that the purchaser or transferee shall provide security for the performance of the assumed obligation and shall provide and maintain a letter of credit, surety bond, or other security in a form and amount mutually agreeable to the Parties.
- 25.0 **Amendments**
- 25.1 Should existing federal regulations or guidelines be amended, the EWG will examine the implementation of these changes or amendments taking account the special characteristics of the Arctic environment and make appropriate recommendations to the Steering Committee in accordance with section 4.3 of this Agreement.
- 25.2 The Protocol for confirmatory testing may be reviewed and adjusted on a site by site basis provided that a majority of the EWG are in agreement with the changes. Permanent or major changes will require the prior approval of the Steering Committee.
- 25.3 In the event that either Party wishes to amend the schedule as set out in Appendix A, it will provide the other Party with thirty (30) months written notice. If unforeseen event(s) or a decision by a regulatory body occurs which has a material impact on this schedule, the Parties will review these events and attempt to arrive at a mutually acceptable alternative.
- 25.4 Both Parties agree to review changes in technology and research studies which may have a bearing on this Agreement and discuss the need for changes resulting from these developments. The Steering Committee may task the EWG to investigate a particular technology pursuant to clause 4.1 (d) of this Agreement.

Recommendations of the EWG will be implemented in accordance with section 4.3.

25.5 If either Party wishes to make other changes to this Agreement, it will provide, in writing, six months notice of proposed changes. Any agreed upon amendments will be executed and attached as an appendix to this Agreement.

25.6 DND and NTI agree to consider amendments in an expeditious manner, particularly where the proposed amendments directly affects the conduct of a clean-up in progress or one which is scheduled to commence in the near term.

#### 26.0 EWG Reports

26.1 All reports of the EWG will be available to provide additional information and guidance in the implementation of this Agreement. In the event of any conflicts or differences in interpretation of the EWG reports and this Agreement, this Agreement will prevail.

#### 27.0 Notices

27.1 Where any Party is obliged or entitled to give any notice, request, approval, demand, consent, direction or other communication (ie Notice) to the other Party, such party shall first communicate the substance thereof personally or by telephone. However, such Notice shall not be sufficiently given until sent in writing to the addressees at the address below. Any Notice may be personally delivered or sent by registered mail or telefacsimile and will be effective upon receipt by the addressee.

27.2 Notices to DND will be sent to:

Director General Environment  
National Defence Headquarters  
101 Colonel By Drive  
Ottawa, Ontario  
K1A 0K2



27.3 Notices to NTI will be sent to:

1<sup>st</sup> Vice President  
Nunavut Tunngavik Incorporated  
Box 1041  
Cambridge Bay  
Northwest Territories  
X0E 0C0

**28.0 Termination of the Agreement**

- 28.1 This Agreement will terminate on the later of December 31<sup>st</sup>, 2008 or when the clean-up work as set out in this Agreement for the sites listed in Appendix A is completed or on such a date agreed to by the Parties in accordance with clause 25.3 of this Agreement.
- 28.2 Notwithstanding clause 28.1 of this Agreement, monitoring and any necessary remediation in accordance with section 20 of this Agreement will continue for twenty five (25) years after the termination of this Agreement.
- 28.3 At the end of twenty five years of monitoring following the termination of this Agreement, DND and NTI will negotiate a new agreement to specify the terms of any further monitoring (if required).

## Annexes to the Agreement

DEW Line Clean-up  
Environmental Provisions

## Appendix A

### Clean-up Schedule

Site		Start Date	Completion Date
CAM M	Cambridge Bay	1998	1999
FOX 5**	Broughton Island	2001	2003
CAM 4**	Pelly Bay	2001	2003
FOX M/CAM 5	Hall Beach/Maclar Inlet	2002	2006
CAM 3	Shepard Bay	2002	2003
DYE M	Cape Dyer	2003	2006
CAM 2	Gladman Point	2003	2004
FOX 2/FOX 3	Longstaff Bluff/Dewar Lakes	2004	2008
CAM 1	Jenny Lind Island	2004	2005
PIN 4	Byron Bay	2005	2006
PIN 3	Lady Franklin Point	2006	2007
PIN 2	Cape Young	2007	2008

\* Dates for the Baffin Sites are tentative pending resolution of economic and business issues

\*\* The starting dates for CAM 4 and Fox 5 and the subsequent starting dates could be moved up pending the timing of the PCBs in paint decision by Environment Canada

## Appendix B

### Environmental Risk Assessment Matrix

#### Introduction

The matrix has been based on the CCME National Classification System for Contaminated Sites, and adapted to address the particular concerns of the Arctic environment. The matrix is divided into three categories of equal weight: contaminated source, pathways, and receptors. The interaction of these three elements results in environmental risk. Each category is assigned 50 points, which are distributed among several factors. Each of these factors has been made as specific as possible in order to reduce the subjectivity of the matrix to a minimum. In addition, each of the three main categories is assigned a highly subjective "special considerations" factor according to the method described in the CCME Classification System. As it is unlikely that any classification system could address all possible factors, a special considerations factor allows the user to increase or decrease the score "to emphasize important concerns about a site and should be used as an exception rather than as a rule" (CCME 1992, p.6-7).

The purpose of the matrix is to evaluate the environmental risk posed by landfills in their current condition and location. It is not suitable for determining the risk posed by a landfill post-closure, as most of the elements in the matrix would not change by the application of a remedial solution. It should also be recognized that monitoring is an integral part of the closure.

The next sections provide guidance to the EWG on the methodology and items to be considered when scoring the matrix. This section is followed by the actual matrix which is to be used in the scoring.

## *A. Contaminant Source*

Five factors were considered under Contaminant Source to describe specific landfills, as follows:

- A.1 Landfill Extent
- A.2 Estimated Depth of Landfill
- A.3 Presence of Leachate
- A.4 Presence of Surface Contaminated Soil
- A.5 Presence of Surface Debris

### A.1 Landfill Extent

Landfill areas will be based on the results of geotechnical/geophysical site surveys and visual observations. Those landfills with an area greater than 10,000 square metres will score 10 and those smaller landfills will be scored in proportion to their size relative to 10,000 square metres.

### A.2 Estimated Depth

The estimated depth of a landfill is determined by visual inspection of surrounding topographic features. The average depth of the active layer will be used as a qualifier for the description of landfill depth, as this is generally the maximum depth of investigation. The depth of the active layer may range from one to two meters at these sites, depending on material type; therefore an average depth of 1.5 meters was used in the rating. Landfills with estimated depths of greater than 1.5 meters will score 5 and those with estimated depths of less than 1.5 meters will score less.

### A.3 Presence of Leachate

Leachate provides evidence of contamination within landfill. Leachate can be defined as the presence of contaminants in water emanating from the landfill, but concentrations may be so low as to be difficult to detect. The presence of leachate can be better determined by the presence of contaminated soil at the toe of the landfill, indicating

chronic low levels of contaminants leaching from the landfill. All types of contaminants in leachate (PCBs, (Polychlorinated Biphenyls) TPH (Total Petroleum Hydrocarbons) or inorganics) are considered to be of equal concern, as indicators of contamination within the landfill.

In the scoring, leachate is considered to be either present or not; no interpolation of the score is used in this category.

#### A.4 Surface contaminated soil

Within each landfill, there is potentially a source of contamination. The presence of surface contaminated soil, like the presence of leachate, is an indication that the landfill contains contamination. The volume of contaminated soil is not taken into consideration; this provides a conservative approach in that a small amount of contaminated soil can trigger a high score. The presence of Tier II soils will trigger the highest score (15). Based on the hypothesis that each landfill potentially contains contaminants, 5 points are given to this subsection, even if no surface contaminated soils were identified.

#### A.5 Presence of surface debris

At some landfills surface debris is very extensive, while at others there is almost no debris. Scoring needs to be quantitative; therefore the percentage of the surface area of the landfill that is covered with debris is used as the basis for scoring. A landfill that has surface debris covering more than 50% of its surface receives a full score.

## *B. Pathways*

The primary transport mechanisms for contaminants from the DEW Line landfills are considered to be:

- aerial transport of fine particles; and
- water transport, both as surface water run-off or subsurface water flow.

### B.1 Aerial Transport of Contaminants

All contaminants can be transported as particles; windblown debris is not considered in this category, as debris pickup is inherent in any cleanup. Surface contamination or surface expressions of leachate imply the potential for aerial transport. This factor is given a low weight because the quantity of contaminated soil on the surface of a landfill is generally low relative to the quantity of contaminated soil at the site as a whole. In addition, it is anticipated that relative to the effect of water movement, aerial transport contributes less to the transport of contaminants away from a landfill.

### B.2 Water Movement

Water movement includes the movement of surface water and subsurface water within the active layer. "Groundwater" is not addressed as an issue separate from surface water as the movement of water within the active layer is subject to the same driving forces as surface water. The intent of this sub-category is to examine factors that affect migration away from the landfill – slope, runoff, extent and type of cover on the landfill, annual precipitation and distance to surface water. Among these factors, topography, runoff potential and proximity to surface water are given the highest weight.

#### B.2.1 Topography

The degree of the slope on which the landfill is located is one of the major factors contributing to transport of contaminants; the scoring is carried out on a sliding scale. In cases where there are different slopes across the landfill, a weighted average is used.

### B.2.2 Cover Material – Depth

The extent to which potential contaminants are available to transport is also dependent on the depth and type of cover material. The potential for leachate generation and correspondingly, leachate migration, is related to the infiltration of water into the landfill. Cover over the landfill helps mitigate infiltration of water into the landfill contents. As the thickness of the landfill cover increases, the likelihood that potential contaminants will be released from the landfill decreases. If the active layer is contained in the cover material above the debris, then the potential for surface water infiltration into the landfill is small; this circumstance is assigned the lowest score.

### B.2.3 Cover Material – Type

The erosion potential of a landfill is partly based on the type of cover material. Erosion can eventually lead to the exposure of the landfill contents. Some cover materials are more susceptible to erosion than others; well graded gravels are the least susceptible, and silty materials are the most susceptible. In cases where there is no cover, this factor is assigned the highest score. Where the cover materials consist of a combination of soil types, the scoring should reflect the more conservative or higher score.

### B.2.4 Surface Water/Run-Off Potential

This factor aims to describe the destructive potential of water action on the landfill, which could take the form of waves; streams, rivers or lakes; or seasonal drainage. Where there is significant seasonal drainage, the run-off potential is high. "Significant seasonal drainage" is defined as run-off that has the potential to transport large quantities and concentrations of contaminants to surface water courses over a short period of time (CCME 1992, p.23). Significant seasonal drainage also includes consideration of major snow drifting on a landfill.



### B.2.5 Precipitation

The amount of precipitation received, either as rain or snow fall, affects the amount of surface water infiltration or run-off. The majority of the DEW Line sites receive less than 500 mm of precipitation annually, with the exception of Cape Dyer. Typically, the amount of precipitation at any site is relatively low; therefore it is unlikely that any single precipitation event would cause significant runoff. This factor is therefore given a relatively low weight.

### B.2.6 Distance to Downgradient Perennial Surface Water/Seasonal Drainage Channel

The distance to surface water will affect the probability of contaminants reaching the watercourse. This factor can include streams, seasonal or perennial, running directly through the landfill, or streams and lakes downgradient from the landfill, but it is intended to exclude small ponds with no outflow. On very steep slopes this distance should consider the horizontal distance to the water body rather than the vertical drop. The impact of drainage with respect to contaminant exposure is not considered in this category (it is considered under Receptors); this factor determines whether there is a drainage pathway from the landfill.

## *C. Receptors*

This section addresses the potential for impact on receptors, specifically, aquatic and terrestrial habitats, as well as human exposure. Impact on humans is the primary consideration; however, it should be recognized that impact on humans is implicit in the scoring of factors addressing ecosystem impact. The scoring within each category is to be based on recorded data, as well as local knowledge of the land use in the area, and therefore requires local input.

### C.1 Potential Impact on Receiving Freshwater/Marine Habitat

The water body should be selected based on the potential effects on the receiving habitat. In the selection of the receiving water body to be used in the landfill evaluation matrix, consideration must be given to the regional drainage patterns. For example, where the drainage from a landfill is overland (i.e. there is no direct connection between the landfill and the downgradient water body), water bodies beyond 2 kilometers should not be used in the evaluation. This is based on the premise that natural attenuation of any potential contamination will occur with overland flow. Where a direct connection between a landfill and a downgradient water body exists, via a stream or interconnected ponds, the two-kilometre limit should not be used.

#### C.1.1 Proximity to Receiving Freshwater/Marine Habitat

"Receiving habitat" is considered to be the most potentially impacted significant body of water near the toe of the landfill. The water body may support freshwater or marine life and/or may be used by avifauna and/or terrestrial mammals as a water source. It is not necessarily the seasonal drainage course or perennial water body closest to the landfill toe. This section's objective is to select a habitat which support receptors rather than identify the closest body of water. It is assumed that only habitat downgradient from the landfill is to be considered (given that aerial transport of contaminants to habitat upgradient from the landfill will be addressed by the remediation of contaminated soil).

### C.1.2 Estimated Habitat Usage – Freshwater/Marine

This section is scored based on the frequency of usage within the selected receiving water body: the level of biodiversity and the occurrence of calving/spawning should be considered in scoring. It is recognized that freshwater and/or marine wildlife is potentially more at risk compared with terrestrial wildlife or avifauna, which should only be exposed through water ingestion. Thus, when terrestrial wildlife or avifauna is the primary receptor, the score for this factor should fall into the moderate or low category based on the potential frequency of usage. Otherwise, when the selected water body sustains freshwater and/or marine wildlife, the level of biodiversity should be used to evaluate the score. It should be noted that the most conservative approach - in the selection of the receiving water body - must be used when scores from section C.1.1 and C.1.2 are combined. Finally, "Biologically sensitive" areas such as bird sanctuaries and/or endangered, threatened or vulnerable populations should be considered as "special considerations".

### C.2 Potential Impact on Receiving Terrestrial Habitat

#### C.2.1 Extent of Vegetation

Typically the area in which to consider vegetation would include an area 300 m downgradient from the toe of the landfill. The area within this distance is expected to be most susceptible to uptake of contaminants if they are leaching from the landfill, but a larger or smaller area could be considered if site specific conditions warrant it.

#### C.2.2 Estimated Habitat Usage – Terrestrial/Avifauna

The same criteria as for usage of aquatic habitat are to be applied.

## C.3 Potential Human Exposure Through Land Use

### C.3.1 Presence/Occupation

This factor addresses strictly dermal exposure and inhalation; consumption of food and water from the area is dealt with in subsequent factors. The risk of dermal exposure or inhalation is much lower when soil is frozen; therefore winter occupation of the site is assigned a low risk. "Summer" in this factor is intended to include the spring, summer and fall periods when the ground is not frozen. Within this factor, the scoring takes into account the likelihood and the duration of contact. In such way, proximity to a community is considered (high likelihood of contact), although proximity to a community does not necessarily trigger a high score if visits are infrequent (low duration of contact).

The likelihood of contact considers proximity to community or to a camp, as well as proximity to "travel routes". The duration of contact considers full time residences (i.e. permanent community for high, summer camp for moderate, winter camp or travel routes as low). Scores may be interpolated between the allocated points, according to the table below.

Table 1-1: Scoring Guide for Section C.3.1

	High Likelihood of Contact	Moderate Likelihood of Contact	Low Likelihood of Contact
High Duration of Contact	8	6	4
Moderate Duration of Contact	6	4	2
Low Duration of Contact	4	2	1

For large DEW Line sites, different parts of the site need to be considered individually, as some areas of the site could be quite far (more than a few kilometres) from the landfill under consideration.

### C.3.2 Proximity to Drinking Water Source

Regardless of whether the source is seasonal or perennial, an established community or a summer camp water source located downgradient of the landfill is to be considered in this factor.

### C.3.3 Food Consumption

Sedentary organisms are more susceptible to local inputs as their exposure is large if they are downgradient from the landfill. These organisms can include bottom-dwellers such as sculpins, mussels, sea urchins etc., as well as terrestrial vegetation, which can be used for medicinal purposes. This kind of contamination "is quite localized when considered on a broad regional scale" (DIAND 1997, pg. 5). Migratory marine animals may have body burdens of contaminants; these are not directly attributable to local contaminant sources, as the vast majority of organochlorines, for instance, arrive in the Arctic via long range transport.

Caribou living in the general area of DEW Line sites do not have elevated levels of contaminants, since they feed over a very wide area. The Canadian Arctic Contaminant Assessment Report (DIAND, 1997) describes these results in more detail.

It is recognized, however, that sources such as DEW Line sites do contribute contaminants to the Arctic ecosystem. For the purpose of scoring the matrix, therefore, a high consumption of animals from the area surrounding the DEW Line sites has the potential to pose a higher risk than a low consumption, although in general the risk remains low.

This factor is divided into two sub-sections, and the score is the sum of the score for each of the two sub-sections.

### 1.3 Special Considerations

As indicated in the introduction to the matrix (section 1.1), each of the three main categories includes a "*special considerations*" factor. The proposed value of the special considerations factor is a maximum of ten percent of the overall score for each category. It is intended that no circumstance will allow a user to assign a special considerations score that will cause the score for that category to exceed the maximum allotted. To avoid undue bias, it is also suggested that the user should complete the entire evaluation form and score a site before addressing special considerations in the total score.

The Environmental Working Group (EWG) based the landfill risk evaluation matrix on the CCME model which defines three categories: contaminant source, pathways and receptors. Within those three categories, the EWG tried to address all of the possible factors contributing to risk. Recognizing that even a thorough matrix could never address all possible risk factors, special considerations were included to address specific risk factors, which are not general to all of the DEW Line sites.

As noted in the CCME document, the special considerations factor is not intended to be applied on a regular basis, as it addresses very site-specific risk factors. In fact, if the special consideration factor was being consistently applied in the scoring of landfills, it would indicate that the matrix itself was incomplete. Special considerations should be site-specific characteristics that can be documented.

Three examples of how special considerations could be applied are provided to clarify the use of such a classification:

#### *Example 1. Wildlife on site*

At Byron Bay, the caribou belong to the Peary herd, an endangered species. It may be that "special considerations" points would be assigned to the Receptors category when endangered, threatened and/or vulnerable species (COSEWIC, 1997) are known to visit the DEW Line landfill.