

March 9, 2010

Shannon Hayden
Regulatory Officer
Mackenzie Valley Land and Water Board
PO Box 2130
7th Floor - 4910-50th Avenue
Yellowknife, NT
X1A 2P6

Dear Ms. Hayden:

**Re: Town of Hay River
 Type A Water Licence Renewal
 MV2009L3-0005
 Draft Water Licence**

The Department of Environment and Natural Resources (ENR) has reviewed the above noted project based on its mandated responsibilities under the *Environmental Protection Act*, the *Forest Management Act*, the *Forest Protection Act* and the *Wildlife Act* and provides the following comments and recommendations for consideration by the Board.

1) Topic: Use of the Term “Engineer”

Comment

Throughout the draft Water Licence, references are made to particular tasks that an “engineer” has to complete (i.e. inspect, review, design, etc.). Some terms utilize the word “engineer” while other terms utilize the words “qualified engineer”.

Recommendation

For consistency, ENR recommends that all terms that requires and engineer’s review, inspection, design, etc. should say, “... *by a qualified engineer*...”.

2) Topic: Schedule D: Conditions Applying to Waste Disposal

Part D, Sub-part (4): There is a spelling error in this section. CBOD stands for *carbonaceous biological oxygen demand* as opposed to the use of *carbaceous*.

3) Topic: Schedule D, Sub-part (7): Solid Waste Disposal Drainage Study

Comment:

The Solid Waste Disposal Drainage Study requested by the Board may take the Town of Hay River some time to provide.

Recommendation:

ENR recommends that the Board provide additional time for the Licensee to provide this report. ENR recommends that the term be reworded as follows:

The Licensee shall within 12 months of issuance of this licence, submit to the Board for approval, a Solid Waste Disposal Facility Drainage Study that includes, but is not limited to the information as set in Schedule D, item 1.

4) Topic: Schedule D, Sub-part (12): Industrial and Agricultural Waste

Comment:

ENR notes that in this Condition, the Board has requested that the Town of Hay River, “*shall, prior to introducing any new industrial or agricultural Waste into the Waste Treatment Facilities, submit to the Board for approval a description of the Waste, including volumes of Waste, types of Waste and any mitigative measures proposed to protect the treatment disposal facilities.*”

ENR would like to clarify that the Board has Guidelines designed for, and applicable specifically to, industrial or agricultural waste originating from within municipal boundaries.

Recommendation:

ENR is referring to the *Guideline for Agricultural Waste Management*¹ and the *Guideline for Industrial Waste Discharges*². These Guidelines may serve as an appropriate mitigative measure for wastes originating from within municipal/community boundaries. ENR also advises however, that these guidelines are designed for and specifically state they are applicable to industrial or agricultural waste originating from within municipal boundaries – they are not applicable to industrial or agricultural waste originating from outside municipal/community boundaries. Wastes from these outside sources will need

¹ http://www.enr.gov.nt.ca/live/documents/documentManagerUpload/agricultural_waste.pdf

² http://www.enr.gov.nt.ca/live/documents/documentManagerUpload/industrial_waste_guidelines.pdf

to be screened and assessed independently to ensure appropriate mitigative measures are in place.

5) Topic: Schedule F: Conditions Applying to Closure and Reclamation

Comment:

Schedule F, Sub-part (k): This term states, *“Monitoring and annual reporting details of how leachate, surface and subsurface runoff during and after closure.”* This term is either an incomplete sentence, or there is a typo in it.

6) Topic: Schedule H: conditions Applying to Operation and Maintenance

Comment:

ENR notes that the numbering starts at 2 instead of 1.

Recommendation:

For clarity, ENR recommends that conditions a. to q. be combined into different sections. For example, the items could be separated as: 1a) Solid Waste Facility (items I, ii, iii...); 1b) Sewage Disposal Facility (items I, ii, iii...); 1c) Biotreatment Pad, etc.

7) Topic: Surveillance Network Program: Sampling and Analysis Requirements

Comment:

Section (3): It is unclear whether Station Number 0053-5 is to measure surface water or groundwater. In the description of this station, it states that the rationale is to monitor water quality associated with runoff and seepage from the solid waste disposal facility. ENR assumes this to mean surface water. However, in Section (3) the parameters table indicates that groundwater level is to be measured.

Recommendation:

ENR recommends that this be clarified in the water Licence.

8) Topic: Parameters for Run-off and Seepage from the Solid Waste Disposal Facility

Comment:

ENR is pleased to see that a list of parameters has been updated for the analysis of “runoff and seepage” from the solid waste disposal facility. However, ENR notes that a

strict adherence to testing for these parameters for seepage/leachate may not be warranted over the entire term of the Water Licence.

Recommendation:

ENR recommends that the parameter list be flexible to accommodate and adapt to future information. For example, information provided by the results of the Solid Waste Disposal Facilities Drainage Study (Schedule D, Section g.) may help to define appropriate parameters for seepage/leachate testing that more accurately reflect issues of concern from this specific facility.

9) Topic: Fencing

Comments:

ENR written comments of Oct 7, 2009, made recommendations with respect to fencing at the Solid Waste Disposal Facility (SWDF). The issues of concern to ENR that remain are:

- Unacceptable and immediate risk to people and wildlife from uncontrolled access to the Hazardous Waste Storage Area
- Unacceptable and immediate risk of wildlife mortality
- Unacceptable and immediate risk of human interaction with carnivores on site.

ENR is pleased to note that during the Technical Session held on November 13, 2009, the Town stated that they would:

“Take the fencing issue seriously” and would “eventually build a fence that will encompass the entire solid waste facility”.

However, ENR still has outstanding concerns due to the Town’s inability to commit to a timeframe for installation of a completed fence.

Proper fencing would not only help to minimize windblown debris, a condition of the draft licence (See Schedule H; Item H), but also control access to the site and minimize wildlife interaction. As outlined in Schedule H; Item I (pg. 13) of the draft licence, the Town shall submit a Hazardous Waste Management Plan in accordance with the ENR guidance document Developing a Community Based Hazardous Waste Management Plan. This document lists general requirements for Hazardous Waste Storage that specifies this type of facility must be in a “secure area with controlled access” (pg. 9).

Recommendations:

1. ENR recommends the Town develop and submit a Plan to the MVLWB that proposes the timely installation of a perimeter fence that will prevent unauthorised access and windblown debris. The Plan must include a specific timeline for its completion. ENR would be available for consultation regarding fencing recommendations (i.e. suitable fence types and distributors).
2. If adequate perimeter fencing, capable of controlling site access, preventing windblown debris and deterring wildlife, cannot be installed in a timely manner ENR recommends immediate installation of temporary fencing around the existing Hazardous Waste Storage Area at the SWDF. This would prevent accidental release of hazardous waste contaminants to the receiving environment by wildlife and mitigate concerns related to human safety until a perimeter fence is in place.

10) Topic: Abandonment and Restoration

Comment

It is duly noted that the Draft Terms and Conditions uses both the Terms “Abandonment and Restoration” and “Closure and Reclamation”. It is unwise to use these terms interchangeably as “Restoration” and “Reclamation” have markedly different definitions.

The Terms “Abandonment and Restoration” are the exact wording utilized in the MVRMA, the Mackenzie Valley Land Use Regulations and the NWT Waters Act and Regulations (NWTWA). Nowhere in the Legislation does it refer to Closure and Reclamation.

The terms “abandonment” and “restoration” are used in the Mackenzie Valley Land Use Regulations Part 26 (1) (o), Part 32 1 (a) and (b) and Part 15 that states “Unless otherwise authorized by a Permit, after completing a land use operation, a Permittee shall “*restore*” the permit area to substantially the same condition as it was prior to the commencement of the operation”

The NWT Waters Regulations utilize the terms Abandonment and Restoration in Part 6 (1) (h) which states: “in any other case, plans for the abandonment, or any temporary closing, of the proposed undertaking.” Also, Security Part 12 (1) (a), (b) and (c) uses the terms “abandonment” and “restoration”

The point here is that the Board’s authority hinges on the terminology of the Legislation. Using the Term “restoration” gives the Board greater latitude and authority than if they choose to use the word “reclamation” which is not used in the previously mentioned Acts. There can be a tremendous difference between the restoration of a Permit or Licenced area and a “reclaimed” area. The standard of reclamation can be much less

than restoration of a developed area. For instance, reclamation could be construed as not filling a mining pit but turning it into a lake that never existed on the site previously. In this case the company could argue in court it had legally reclaimed the site. To restore such a pit to its previous state would require filling in the pit and then contouring it to the previous configuration and reseeding with vegetation that was previously pre-existing.

The word “restoration” provides the Board with much more authority and latitude when considering the restoration or rehabilitation of a developed site. Using the word reclamation as a standard in the Schedule of Terms and Conditions could dilute that legislated authority.

Recommendation:

Continue using the terms “Abandonment and Restoration” in the Terms and Conditions and Schedules. I would imagine plans submitted by the proponent could use the words “Closure and Reclamation” but only on submitted plans for approval of the Board. In this way the authority of the Board is not diluted, nor can the standard of reclamation be contested in litigation as the word “restoration” allows the board increased latitude in restoring a site to near its previous condition.

Information Requests:

- Can the Board define “Waste Treatment Facilities” as mentioned in Part D.12 (pg. 6) of the draft Water Licence? Does this include the Solid Waste Disposal Facilities and Biotreatment pad?
- Will the Board be willing to consider comments and recommendations from ENR regarding the SWDF when the Operations and Maintenance plan is submitted and/or updated?
- In Schedule F of the draft Licence (Conditions Applying to Closure and Reclamation), can the Board elaborate on what details would be associated with the ‘Hazardous Waste’ requirement in Item H (e.g. disposal records)?
- ENR understands it is a requirement of the draft Water Licence to minimize windblown debris (See Schedule H; Item H). ENR assumes this would be done through fencing; however it is not clearly stated how this is to be accomplished. Can the Board specify by what method this is to be accomplished (i.e. fencing or frequent cover of debris)?

Comments and recommendations were provided by ENR technical experts in the Environment Division, and /or the Forest Management Division, Wildlife Division and the South Slave Region, and were coordinated and collated by the Environmental Assessment and Monitoring Section (EAM).

Should you have any questions or concerns please do not hesitate to contact Patrick Clancy, Environmental Regulatory Analyst, at (867) 920-6591 or email at patrick.clancy@gov.nt.ca.

Sincerely,

A handwritten signature in black ink, appearing to read 'P. Clancy', written in a cursive style.

Patrick Clancy
Environmental Assessment Analyst
Environmental Assessment and Monitoring
Environment and Natural Resources